MONTANA

CODE

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OFFICERS

President	Gary Aklestad
President Pro Tempore	Bruce Crippen
Majority Floor Leader	John Harp
Majority Whip	Mike Foster
Minority Floor Leader	Mike Halligan
Minority Whip	Eve Franklin
Secretary of the Senate	Rosana Skelton

MEMBERS

Name	Preferred Mailing Address	Dist No	Party
Aklestad, Gary C.	PO Box 32 Galata MT 59444-0032	44	Republican
Baer, Larry L.	6093 Montana Hwy 35 Bigfork MT 59911-6062	38	Republican
Bartlett, Sue	416 N Beattie St Helena MT 59601-3701	27	Democrat
Beck, Thomas A. "Tom"	792 Yellowstone Trl Deer Lodge MT 59722-9730	28	Republican
Benedict, Steve	PO Box 668 Hamilton MT 59840-0668	30	Republican
Bishop, Al	3020 Leeann Blvd Billings MT 59102-0442	9	Republican
Brooke, Vivian M.	1610 Madeline Ave Missoula MT 59801-5806	33	Democrat
Burnett, James H. "Jim"	HC 50 Box 4460 Luther MT 59051-9701	12	Republican
Christiaens, B.F. "Chris"	600 36th Street South Great Falls MT 59405-3508	23	Democrat
Cole, Mack	Box 286 Hysham MT 59038-0286	4	Republican
Crippen, Bruce D.	PO Box 80747 Billings MT 59108-0747	10	Republican
Crismore, William S.	237 Airfield Rd Libby MT 59923-9301	41	Republican
DePratu, Bob	PO Box 1217 Whitefish MT 59937-1217	40	Republican
Devlin, Gerry	PO Box 186 Terry MT 59349-0186	2	Republican
Doherty, Steve	1531 3rd Ave SW Great Falls MT 59404-2715	24	Democrat
Eck, Dorothy	10 W Garfield St Bozeman MT 59715-5602	15	Democrat
Emerson, C.A. "Casey"	King Tool Inc, 5350 Love Ln Bozeman MT 59715-9408	14	Republican
Estrada, Sharon	528 Clark Billings MT 59101-1725	7	Republican
Foster, Mike	414 N Cedar St Townsend MT 59644-2100	20	Republican
Franklin, Eve	PO Box 7208 Great Falls MT 59406-7208	21	Democrat
Gage, Delwyn	PO Box 787 Cut Bank MT 59427-0787	43	Republican
Glaser, Wm. E. "Bill"	1402 Indian Creek Rd Huntley MT 59037-9348	8	Republican
Grosfield, Lorents	HC 87 Box 2145 Big Timber MT 59011-9703	13	Republican
Halligan, Mike	269 W Front St Missoula MT 59802-4301	34	Democrat
Hargrove, Don	PO Box 1 Belgrade MT 59714-0001	16	Republican
Harp, John G.	53 Willow Dr Kalispell MT 59901-2834	42	Republican
Hertel, John R.	RR 1 Box 30 Moore MT 59464-9703	47	Republican
Holden, Ric	164 Road 253 Glendive MT 59330-9438	1	Republican
Jabs, Reiny	HCR 36 Hardin MT 59034-9613	3	Republican
Jenkins, Loren	Box 9 Big Sandy MT 59520-0009	45	Republican
Jergeson, Greg	Box 1568 Chinook MT 59523-1568	46	Democrat
Keating, Thomas F.	PO Box 20522 Billings MT 59104-0522	5	Republican
Lynch, John "J.D."	527 W Mercury St Butte MT 59701-1629	19	Democrat
Mahlum, Dale	10955 Hwy 93 N Missoula MT 59802-9227	35	Republican
McCarthy, Bea	1906 Ogden St Anaconda MT 59711-1706	29	Democrat
McNutt, Walter L.	110 12Th Avenue SW Sidney MT 59270-3614	50	Republican
Mesaros, Kenneth "Ken"	2191 Milligan Rd Cascade MT 59421-8001	25	Republican
Miller, Ken	PO Box 186 Laurel MT 59044-0186	11	Republican
Mohl, Arnie A.	3303 Hwy 2 E Kalispell MT 59901-6653	39	Republican
Nelson, Linda J.	469 Griffin Rd Medicine Lake MT 59247-9708	49	Democrat
Shea, Debbie	100 Moon Lane Butte MT 59701-3975	18	Democrat

Sprague, Mike	174 Erickson Court Billings MT 59105-2345	6	Republican
Stang, Barry "Spook"	2 Montana Hwy 135 S, Po Box 277 St Regis MT 59866-0340	36	Democrat
Swysgood, Charles "Chuck"	506 S Atlantic St Dillon MT 59725-2723	17	Republican
Taylor, Mike	Box 152 Proctor MT 59929-0152	37	Republican
Thomas, Fred	3566 Holly Lane Stevensville MT 59870-6634	31	Republican
Toews, Daryl	HC 66 Box 34 Lustre MT 59225-9703	48	Republican
Van Valkenburg, Fred R.	112 University Ave Missoula MT 59801-4224	32	Democrat
Waterman, Mignon	530 Hazelgreen Ct Helena MT 59601-5410	26	Democrat
Wilson, Bill	1305 2nd Ave N Great Falls MT 59401-3265	22	Democrat

OFFICERS AND MEMBERS OF THE MONTANA HOUSE OF REPRESENTATIVES

1997

100 Members

65 Republicans 35 Democrats

OFFICERS

Speaker	John Mercer
Speaker Pro Tempore	Marian Hanson
Majority Leader	Larry "Hal" Grinde
Majority Whip	Karl Ohs
Minority Leader	Vicki Cocchiarella
Minority Whip	Tim Dowell
Chief Clerk of the House	Marilyn Miller

MEMBERS

Name	Preferred Mailing Address	Dist No	Party
Adams, Darrel	155 Eastland Crossroad Columbia Falls MT 59912	84	Republican
Ahner, Chris	1470 Boston Rd Helena MT 59601-7330	51	Republican
Anderson, Shiell	738 Hwy 89 N Livingston MT 59047-1234	25	Republican
Arnott, Peggy	1512 Colorado Billings MT 59102-3250	20	Republican
Bankhead, Paul	89 Cottonwood Road Heron MT 59844-9511	72	Republican
Barnett, Joe	201 Spooner Rd Belgrade MT 59714-3429	32	Republican
Barnhart, Beverly	614 S 6th Ave Bozeman MT 59715-4566	29	Democrat
Beaudry, Haley	1 Redwood Drive Butte MT 59701-4339	35	Republican
Bergman, Ellen	1019 S Strevell Ave Miles City MT 59301-4917	4	Republican
Bergsagel, Ernest	HC 84 Box 8045 Malta MT 59538-9701	95	Republican
Bitney, Rod	PO Box 10501 Kalispell MT 59904-3501	77	Republican
Boharski, William E.	1433 5th Ave W Kalispell MT 59901-5521	79	Republican
Bohlinger, John C.	2233 Remington Sq Billings MT 59101-9486	14	Republican
Bookout-Reinicke, Sylvia	35 Plateau Rd, Po Box 327 Alberton MT 59820-0327	71	Republican
Brainard, Matt	818 Woody St Missoula MT 59802-3632	62	Republican
Carey, Bill	219 S 3rd St W Missoula MT 59801-2523	67	Democrat
Clark, Robert C.	PO Box 216 Ryegate MT 59074-0216	8	Republican
Cobb, John	PO Box 388 Augusta MT 59410-0388	50	Republican
Cocchiarella, Vicki	535 Livingston Ave Missoula MT 59801-8003	64	Democrat
Curtiss, Aubyn A.	PO Box 216 Fortine MT 59918-0216	81	Republican
DeBruycker, Roger	HC 77 Box 8 Floweree MT 59440-9801	89	Republican
Denny, Matt	5610 Gharrett St Missoula MT 59803-3010	63	Republican
Devaney, Charles R.	141 Lavalley St Plentywood MT 59254-2124	97	Republican
Dowell, Tim	46 Westview Drive Kalispell MT 59901-3364	78	Democrat
Ellingson, Jon	430 Ryman St Missoula MT 59801-4208	65	Democrat
Ellis, Jr., Alvin A.	HC 50 Box 4840 Red Lodge MT 59068-9724	23	Republican
Ewer, David	1016 5th Ave Helena MT 59601-4444	53	Democrat
Feland, Gary	215 11th Ave N Shelby MT 59474-1720	88	Republican
Galvin, Patrick G.	105 29Th Ave NW Great Falls MT 59404-1333	48	Democrat
Gillan, Kim	750 Judicial Ave Billings MT 59105-2130	11	Democrat
Grady, Edward J. "Ed"	HC 30 Canyon Creek MT 59633-9802	55	Republican
Grimes, Duane	#4 Hole In The Wall Clancy MT 59634-9516	39	Republican
Grinde, Larry Hal	RR 3 Lewistown MT 59457-9803	94	Republican
Hagener, Antoinette R.	612 17th St Havre MT 59501-5509	90	Democrat
Hanson, H.S. "Sonny"	2237 Green Terrace Dr Billings MT 59102-0629	9	Republican
Hanson, Marian W.	PO Box 237 Ashland MT 59003-0237	1	Republican
Harper, Hal	9 Comstock Rd Helena MT 59601-5524	52	Democrat
Harrington, Dan W.	1201 N Excelsior Ave Butte MT 59701-8505	38	Democrat
Hayne, Harriet	PO Box 209 Dupuyer MT 59432-0209	86	Republican
Heavy Runner, George	Box 506 Browning MT 59417-0506	85	Democrat
Hibbard, Chase	PO Box 835 Helena MT 59624-0835	54	Republican

Holland, Don	PO Box 148 Forsyth MT 59327-0148	7	Republican
Hurdle, Joan	PO Box 1991 Billings MT 59103-1991	13	Democrat
Johnson, John	124 Gresham St Glendive MT 59330-1910	2	Democrat
Johnson, Royal C.	2915 Illinois St Billings MT 59102-0814	10	Republican
Jore, Rick	5200 Cheff Ln Ronan MT 59864-9806	73	Republican
Kasten, Betty Lou	HC 77 Box A-14 Brockway MT 59214-9701	99	Republican
Keenan, Bob	Box 697 Bigfork MT 59911-0697	75	Republican
Kitzenberg, Sam	130 Bonnie St Apt 1 Glasgow MT 59230-2101	96	Republican
Knox, Dick*	HC 83 Box 14 Winifred MT 59489-9702	93	Republican
Kottel, Deb	6301 43rd St SW Great Falls MT 59404-5249	45	Democrat
Krenzler, Billie	4537 Ryan Avenue Billings MT 59101-4940	17	Democrat
Lawson, Bob	Box 686 Whitefish MT 59937-0686	80	Republican
Marshall, Rod	2520 Fairway Dr Bozeman MT 59715-5843	28	Republican
Masolo, Gay Ann	20 Buck Dr Townsend MT 59644-9649	40	Republican
McCann, Matt	PO Box 1093 Harlem MT 59526-1093	92	Democrat
McCulloch, Linda	5205 Deschamps Ln Missoula MT 59802-9471	70	Democrat
McGee, Daniel W.	1925 Pinyon Dr Laurel MT 59044-9381	21	Republican
Menahan, William T. "Red"	1304 W 5th St Anaconda MT 59711-1813	57	Democrat
Mercer, John A.	PO Box 460 Polson MT 59860-0460	74	Republican
Mills, Norm	1908 9th St W Billings MT 59102-3310	19	Republican
Molnar, Brad	PO Box 517 Laurel MT 59044-0517	22	Republican
Mood, Doug	PO Box 42 Seeley Lake MT 59868-0042	58	Republican
Ohs, Karl	PO Box 212 Harrison MT 59735-0212	33	Republican
Orr, Scott J.	PO Box 1318 Libby MT 59923-1318	82	Republican
Pavlovich, Robert J. "Bob"	2751 Yale Ave Butte MT 59701-4205	37	Democrat
Pease, Gerald	PO Box T Lodge Grass MT 59050-0556	6	Democrat
Peck, Ray	729 4th Ave Havre MT 59501-4020	91	Democrat
Prouse, Wes	8232 Shepherd Road Shepherd MT 59079-3831	15	Republican
Quilici, Joe	3040 Kossuth St Butte MT 59701-6336	36	Democrat
Raney, Bob	212 S 6th St Livingston MT 59047-3023	26	Democrat
Ream, Robert R. "Bob"	School Of Forestry, U of M Missoula MT 59812-1063	69	Democrat
Rehbein, Jr., William	PO Box 155 Lambert MT 59243-0155	100	Republican
Rose, John "Sam"	PO Box 604 Choteau MT 59422-0604	87	Republican
Ryan, William M. "Bill"	8 18th Ave S Great Falls MT 59405-4113	44	Democrat
Sands, Diane	1733 Phillips Missoula MT 59802-2125	66	Democrat
Schmidt, Trudi	4029 6th Ave S Great Falls MT 59405-3746	42	Democrat
Simon, Bruce T.	217 Clark Ave Billings MT 59101-6040	18	Republican
Simpkins, Richard D.	1221 Park Garden Rd Great Falls MT 59404-3627	49	Republican
Simpson, Dorothy C.	PO Box 142 Florence MT 59833-0142	61	Democrat
Sliter, Paul	PO Box 130, 55 Somers Rd Somers MT 59932-9713	76	Republican
Smith, Liz	311 Freeze Out Ln Deer Lodge MT 59722-9701	56	Republican
Soft, Loren L.	161 Norris Court Billings MT 59105-2340	12	Republican
Squires, Carolyn M.	2111 S 10th St W Missoula MT 59801-3412	68	Democrat
Story, Jr., Robert R.	RR 1, Valley Creek Rd Park City MT 59063-9801	24	Republican
Stovall, Jay	8325 Pryor Rd Billings MT 59101-9013	16	Republican
Swanson, Emily	15042 Kelly Canyon Rd Bozeman MT 59715-9625	30	Democrat
Tash, Bill	45 Vista Dr Dillon MT 59725-3100	34	Republican
Taylor, Lila V.	Box 595 HC 42 Busby MT 59016-9705	5	Republican
Thomas, William "Bill"**	Utica Route Hobson MT 59452	93	Republican
Trexler, Cliff	115 Main St Hamilton MT 59840-2555	59	Republican
Tropila, Joe	209 2nd St NW Great Falls MT 59404-1301	47	Democrat
Tuss, Carley	1910 Colorado Ave Black Eagle MT 59414-1207	46	Democrat
Vick, Steve	5875 Thorpe Rd Belgrade MT 59714-8909	31	Republican
Wagner, Douglas T.	PO Box 190021 Hungry Horse MT 59919-0021	83	Republican
Walters, Allan	416 Grantsdale Road Hamilton MT 59840-3335	60	Republican
Wells, Jack	150 Coulee Dr Bozeman MT 59715-7717	27	Republican
Whitehead, Bill	PO Box 1135 Wolf Point MT 59201-1135	98	Democrat
Wiseman, William R.	3310 Centennial Ct Great Falls MT 59404-3675	41	Republican
Wyatt, Diana E.	300 31st St S Great Falls MT 59405-3356	43	Democrat
Zook, Tom	HC 40 Miles City MT 59301-9806	3	Republican

* Deceased May 7, 1997.

** Assumed Representative Knox's position May 21, 1997.

PREFACE

Adoption

Senate Bill No. 1, adopting the Montana Code Annotated (cited "MCA"), was passed by the 1979 Legislature and became effective January 10, 1979. That bill became Chapter 1, Laws of 1979. The provisions of law relating to recodification are found in Title 1, chapter 11, MCA. The adoption and creation of the MCA were largely achieved through the efforts of Diana S. Dowling. The users of the MCA owe a debt of gratitude to Ms. Dowling and the staff that created the MCA.

Codification

The MCA is a compilation of existing general and permanent law, including the acts of the 55th Legislature of 1997 in regular session. Appropriation acts, resolutions, and laws temporary or special in character, such as repealing, validating, severability, or effective date clauses, are not codified. A list of R.C.M. 1947 sections not codified may be found in the *Table of Corresponding Code Sections*, R.C.M. 1947 to MCA, contained in Vol. 1 of the annotations, which provides the disposition of all R.C.M. 1947 sections.

Arrangement

The Montana Code Annotated is arranged topically. This feature distinguishes the MCA from the 1947 code, in which the titles were arranged alphabetically. The user of the MCA will find titles that relate closely to one another logically and topically grouped in the code. Continuous rearrangement designed to maintain an orderly and logical arrangement is a permanent feature of the code under authority of section 1-11-204(3)(b), MCA.

Numbering System

The code uses a three-element numbering system. The number to the far left designates the title number, the number between the hyphens designates the chapter number, and the number to the right designates the part and section number. Thus 1-2-305 indicates Title 1, chapter 2, part 3, section 5 (cited "section 1-2-305, MCA"). Numbering is sequential, but numbers within chapters and parts and between titles have been skipped to leave room for future expansion.

Editorial Changes

During the continuing recodification process, the Legislative Services Division staff screens statutes for obsolescence, conflicts, unconstitutionality, incorrect grammar, spelling, capitalization, punctuation, numbering, and outlining.

Changes in style that can be made in the text without changing the substance of the law are incorporated by the staff during codification. Errors, inconsistencies, and unconstitutional statutes that were discovered have been corrected by bills introduced in the 1977, 1979, 1981, 1983, 1985, 1987, 1989, 1991, 1993, 1995, and 1997 legislative sessions at the request of the Code Commissioner.

During the initial recodification process, nonsubstantive changes were made in the following areas:

(1) *Punctuation.* Being heavily laden with commas, the 1947 code did not conform with the more modern "open" style of punctuation that uses commas sparingly. The modern style allowed deletion of an average of five commas per section and more than 125,000 commas from the new code with no change in meaning, but with clarity enhanced.

(2) *Spelling.* The staff corrected obvious misspellings and updated archaic spellings with preferred spelling according to Webster's New World Dictionary.

(3) *Grammatical Construction.* There were three types of corrections that were made often under this category: making a pronoun agree with its antecedent in number, gender, and person; changing "nor" to "or"; and changing a verb to agree in number with the subject of a sentence.

(4) *Internal Numbering.* A uniform system of numbering internal paragraphs in a section was used: (1)(2)(3), (a)(b)(c), (i)(ii)(iii), (A)(B)(C). Thus, if the R.C.M. section began with "(a)(b)(c)", it was changed to "(1)(2)(3)".

(5) *"This Act"*. The term "this act" was used thousands of times in the R.C.M. During recodification, "act" was changed wherever possible to a more precise term, such as "title", "chapter", "part", or "section". The original act was studied to determine exactly to which statutes the words "this act" applied, and the appropriate references were then substituted.

(6) *Effective Date.* The calendar date was inserted whenever possible for expressions such as "the effective date of this act", "passage and approval", or "hereafter".

(7) *Changes or Insertions Because of Rearrangement.* Language was inserted or changed whenever necessitated by rearrangement.

(8) *Redundancy.* Redundant words were eliminated.

(9) *Obsolete or Inaccurate References to Offices or Agencies.* There were many code sections needing changes because later acts affected names and terminology. For instance, the Executive Reorganization Act of 1971 abolished or renamed hundreds of offices and agencies. The recodification staff members searched the code for references to abolished or renamed offices and agencies. They also studied any amendments made between 1971 and 1977 that made further changes in the Executive Branch. After careful study to determine the law, the language was changed during the recodification process to reflect the current legal status of all affected offices or agencies.

Code Commissioner Reports

All changes, other than punctuation, capitalization, and spelling, made by the staff during the initial recodification are reported in the *Official Report of the Montana Code Commissioner* contained in the unnumbered volume of the 1978 MCA (red edition). Following each legislative session, all such changes made since the last report are reported and published in annotations, Vol. 1 (see section 1-11-204(3)(c), MCA).

Effect of Changes

No presumption of legislative construction is to be drawn from the MCA code arrangement (section 1-11-103, MCA). In case of inconsistencies resulting from omissions or other errors in codification, the version of the official enrolled bill on file with the Secretary of State will prevail. Codification does not change the law, and the effect of each statute is the same as when originally enacted. Because the Code Commissioner has no legislative power, there can be no change in the law without legislative sanction. The function of codification is to organize law, not to change law.

Contents

(1) *Constitution and Rules of Court.* The code as adopted by Chapter 1, Laws of 1979, consists only of statute text and histories. The 1972 Montana Constitution, the Montana Rules of Civil Procedure, the Montana Rules of Appellate Procedure, the Montana Rules of Evidence, the Montana Uniform District Court Rules, and the Montana Justice and City Court Rules of Civil Procedure are printed with the code for the convenience of the user.

(2) *Compiler's Comments.* Compiler's comments related to 1997 amendments and to certain significant earlier changes are printed with the code. Amendment notes contain the effective date of the amendment if the effective date is other than the general effective date of October 1 (see section 1-2-201, MCA). Earlier amendment notes have been transferred to the annotations. Compiler's comments related to other items of permanent significance are contained in the annotations (see the preface in Vol. 1 of the annotations).

(3) *Histories.* The user is cautioned to note that the reported history of each section in the MCA brought forward from the former code is the same history of the section as it appeared in the old code. When an R.C.M. section was split into several MCA sections, the history may be confusing or even misleading. To redo all histories to have them coincide exactly with MCA sections would have been nearly impossible. Legislative histories begin with the Bannack Statutes of 1864-65. References to the California Code and the Field Code of New York are also included since those codes are the source of Montana's 1892 Civil Code.

Legislative action taken since the 1979 recodification has been added to the end of the history.

Abbreviations used in the MCA histories are as follows:

Ad.—Adopted
amd.—Amended
Ap.p.—Appears in Part
C.—Code
C. Civ. Proc.—Code of Civil Procedure
Cal.—California
Ch.—Chapter
Civ. C.—Civil Code
Cod.—Codified
Comp.—Compiled
Const. Amend. No.—Constitutional Amendment Number
Div.—Division
En.—Enacted
Exec. Ord.—Executive Order
Ex. L.—Extra Laws
Field—Field Code of New York
I.M. No.—Initiative Measure Number
L.—Laws of
MCA—Montana Code Annotated
p.—Page
Pen. C.—Penal Code
Pol. C.—Political Code
R.C.M.—Revised Codes of Montana
redes.—Redesignated
re-en.—Reenacted
Ref. No.—Referendum Number
rep.—Repealed
Rev.—Revised
Sec.—Section
Sp. L.—Special Session Laws
Stat.—Statutes
Sup. Ct. Ord.—Supreme Court Order

Annotations

Annotations to the code are now updated biennially and appear in separate volumes correlating to the statute text. The annotations are designed for insertion in three-ring binders and are updated on a title-by-title basis. See the preface in Vol. 1 of the annotations.

Index

You will find the Preface and Guide to Usage of the Index, which appears at the beginning of the first volume of the index, to be very helpful and informative.

Gregory J. Petesch
Code Commissioner
State Capitol
Helena MT 59620-1706

September 1997

THE CONSTITUTION OF THE STATE OF MONTANA

THE CONSTITUTION OF MONTANA AS ADOPTED BY THE CONSTITUTIONAL CONVENTION MARCH 22, 1972, AND AS RATIFIED BY THE PEOPLE, JUNE 6, 1972, REFERENDUM NO. 68

Preamble

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XII. Departments and Institutions.
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XIV. Constitutional Revision.

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PREAMBLE

We the people of Montana grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity and to secure the blessings of liberty for this and future generations do ordain and establish this constitution.

Constitution Cross-References

Constitutional revision, Art. XIV, Mont. Const.

Montana Constitution to be published in MCA, 1-11-204.

Enrolled copy of constitution in custody of Secretary of State, 2-6-111.

Petition for initiative for Constitutional Convention, 13-27-206.

Petition for initiative for constitutional amendment, 13-27-207.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2930, 2931.

Committee report, Vol. II 620, 625, 957, 962, 969, 1036.

Debate — committee report, Trans. 36, 37, 1634, 1954, 2761.

Debate — style and drafting report, Trans. 2476, 2921.

Delegate proposals, Vol. I 159, 168, 198, 245.

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Ordinance No. 1 (see anno. vol. 1, Federal Materials).

Sovereignty and jurisdiction of state, 2-1-102.

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Agreement with Indians concerning hunting and fishing on Flathead Indian Reservation, 87-1-228.

State-federal relationships regarding fish and wildlife, Title 87, ch. 1, part 7.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2931 through 2933.

Committee report, Vol. II 838 through 841, 1030 through 1032, 1037.

Debate — style and drafting report, Trans. 2567 through 2572, 2921.

Delegate proposals, Vol. I 99, 294.

Final consideration, Trans. 2570 through 2573.

Text as adopted, Vol. II 1087.

All provisions of the enabling act of Congress (approved February 22, 1889, 25 Stat. 676), as amended and of Ordinance No. 1, appended to the Constitution of the state of Montana and approved February 22, 1889, including the agreement and declaration that all lands owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the congress of the United States, continue in full force and effect until revoked by the consent of the United States and the people of Montana.

ARTICLE II

DECLARATION OF RIGHTS

Section

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35. Servicemen, servicewomen, and veterans.

Section 1. Popular sovereignty. All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.

Cross-References

Self-government, Art. II, sec. 2, Mont. Const.

Right of participation in governmental affairs, Art. II, sec. 8, Mont. Const.

Right to know, Art. II, sec. 9, Mont. Const.

Right of suffrage, Art. II, sec. 13, Mont. Const.

General government, Art. III, Mont. Const.

Constitutional revision, Art. XIV, Mont. Const.

Government Structure and Administration, Title 2.

Basic political rights, Title 49, ch. 1, part 2.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 620, 626, 957, 962, 967, 969, 1038.

Cross-references, 1889 and 1972 Constitutions, Vol. II 646.

Debate — committee report, Trans. 1635, 1636.

Debate — style and drafting report, Trans. 2476, 2921.

Final consideration, Trans. 2627, 2628.

Text as adopted, Vol. II 1087.

Section 2. Self-government. The people have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish the constitution and form of government whenever they deem it necessary.

Cross-References

Popular sovereignty, Art. II, sec. 1, Mont. Const.

General government, Art. III, Mont. Const.

Local government, Art. XI, Mont. Const.

Constitutional revision, Art. XIV, Mont. Const.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 620, 626, 957, 962, 967, 969, 1038.

Cross-references, 1889 and 1972 Constitutions, Vol. II 646.

Debate — committee report, Trans. 1636.

Debate — style and drafting report, Trans. 2476, 2921.

Final consideration, Trans. 2628, 2629.

Text as adopted, Vol. II 1087.

Section 3. Inalienable rights. All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

Cross-References

Right to bear arms, Art. II, sec. 12, Mont. Const.

Environment and natural resources, Art. IX, Mont. Const.

Department of Agriculture, Title 2, ch. 15, part 30.

Department of Livestock, Title 2, ch. 15, part 31.

Department of Natural Resources and Conservation, Title 2, ch. 15, part 33.

Department of Fish, Wildlife, and Parks, Title 2, ch. 15, part 34.

Department of Environmental Quality, Title 2, ch. 15, part 35.

Water Courts, Title 3, ch. 7.

Environmental Quality Council, Title 5, ch. 16.

Coal severance tax, Title 15, ch. 35.

Resource indemnity trust tax, Title 15, ch. 38.

Parks, Title 23, ch. 1.

Recreation, Title 23, ch. 2.

Human Rights, Title 49.

Health and Safety, Title 50.

Environmental Protection, Title 75.

State Lands, Title 77.

Agriculture, Title 80.

Livestock, Title 81.

Minerals, Oil, and Gas, Title 82.

Water Use, Title 85.

Fish and Wildlife, Title 87.

Resource development and reclamation, Title 90, ch. 2.

Energy development and conservation, Title 90, ch. 4.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 620, 626 through 628, 957, 962, 967, 969, 1038.

Cross-references, 1889 and 1972 Constitutions, Vol. II 646.

Debate — committee report, Trans. 1240, 1636, 1640, 1642, 1756, 1809, 2294, 2370, 2690.

Debate — style and drafting report, Trans. 2476, 2477, 2921.

Delegate proposals, Vol. I 75, 96, 107, 108, 142, 207, 242, 261, 308, 309.

Final consideration, Trans. 2629, 2630.

Text as adopted, Vol. II 1087.

Section 4. Individual dignity. The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

Cross-References

Rights of convicted, Art. II, sec. 28, Mont. Const.

Servicemen, servicewomen, and veterans allowed special consideration, Art. II, sec. 35, Mont. Const.

Discrimination in education prohibited, Art. X, sec. 7, Mont. Const.

Elimination of sexual discrimination in statutes, 1-2-105.

Nepotism, Title 2, ch. 2, part 3.

Human Rights Commission, 2-15-1706.

Comparable worth — state employees, 2-18-208.

Discrimination prohibited in urban renewal projects, 7-15-4207.

Discrimination against members of organized militia in employment prohibited, 10-1-603, 10-1-604.

Impartiality in state contracts — Montana preference provisions, 18-1-111, 18-1-112.

Discrimination by University System prohibited, 20-25-101.

Right of university student to privacy, 20-25-511 through 20-25-516.

Discrimination in work-study programs prohibited, 20-25-707.

Insurance — unfair discrimination prohibited, 33-18-206.

Handicapped persons' public employment preference, Title 39, ch. 30.

Marriage between persons of same sex prohibited, 40-1-401.

Malicious intimidation or harassment relating to civil or human rights, 45-5-221.

Sentence enhancement — offenses because of victim's race, creed, religion, color, or national origin, 45-5-222.

Human Rights, Title 49.

Sex discrimination in insurance or retirement prohibited, 49-2-309.

Political activity of employees of Department of Fish, Wildlife, and Parks limited, 87-1-204.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 620, 628, 957, 962, 967, 969, 1038.

Debate — committee report, Trans. 1642 through 1646, 2032, 2044, 2151, 2496.

Debate — style and drafting report, Trans. 2477, 2921.

Delegate proposals, Vol. I 94, 105, 126, 127, 148, 149, 161, 223, 312, 313.

Final consideration, Trans. 2630, 2631.

Text as adopted, Vol. II 1087.

Section 5. Freedom of religion. The state shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

Cross-References

Discrimination on basis of religion prohibited, Art. II, sec. 4, Mont. Const.; Title 49.

Aid prohibited to sectarian schools, Art. X, sec. 6, Mont. Const.

Religious discrimination prohibited in education, Art. X, sec. 7, Mont. Const.

Coercion or undue influence of voters based on religion, 13-35-218.

Religious instruction released time program, 20-1-308.

Exemption from school immunization requirement on religious grounds, 20-5-405.

Distribution of sectarian or denominational publication in schools prohibited — prayer in schools permitted, 20-7-112.

Securities issued by religious organization exempt from regulation, 30-10-104.

Religious corporations sole, Title 35, ch. 3.

License to practice medicine not required for practice of Christian Science or circumcisions by rabbis, 37-3-103.

Right of nonassociation with labor organization on religious grounds — requirements and procedure for assertion of right, 39-31-204.

Duty of Christian Scientists and religious healers to report dependent and neglected child, 41-3-201.

Management of funds by religious institutions, Title 72, ch. 30.

Possession of eagle parts or plumage by Indians — religious purposes, 87-5-201.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 620, 621, 629, 957, 963, 969, 970, 1038.

Cross references, 1889 and 1972 Constitutions, Vol. II 646.

Debate — committee report, Trans. 1646, 1647, 1738, 2015, 2745.

Debate — style and drafting report, Trans. 2477, 2921.

Delegate proposals, Vol. I 189, 190, 312, 313, 315.

Final consideration, Trans. 2631, 2632.

Text as adopted, Vol. II 1087.

Section 6. Freedom of assembly. The people shall have the right peaceably to assemble, petition for redress or peaceably protest governmental action.

Cross-References

Immunity of legislator for speech or debate in Legislature, Art. V, sec. 8, Mont. Const.

Public participation in governmental operations, Title 2, ch. 3.

Disaster and emergency services law not to interfere with dissemination of news or public comment, 10-3-102.

Limitation on political activity — disaster and emergency services organization, 10-3-112.

Prevention of public meetings of electors, 13-35-213.

Criminal contempt, 45-7-309.

Conduct disruptive of public order, Title 45, ch. 8, part 1.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 621, 629, 958, 963, 967, 970, 1038.

Cross references, 1889 and 1972 Constitutions, Vol. II 646.

Debate — committee report, Trans. 1647 through 1649.

Debate — style and drafting report, Trans. 2477 through 2481, 2921.

Final consideration, Trans. 2632, 2633.

Text as adopted, Vol. II 1087.

Section 7. Freedom of speech, expression, and press. No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

Cross-References

Immunity of legislator for speech or debate in Legislature, Art. V, sec. 8, Mont. Const.

Jurisdiction denied Justice's Court in libel or slander action, 3-10-301.

Disaster and emergency services law not to interfere with dissemination of news or public comment, 10-3-102.

Limitation on political activity of disaster and emergency services organization, 10-3-112.

Electioneering at polling place on election day prohibited, 13-35-211.

Illegal influence of voters, 13-35-214.

Coercion or undue influence of voters, 13-35-218.

Election materials not to be anonymous, 13-35-225.

Unlawful acts of employers and employees relating to elections, 13-35-226.

Prohibited political contributions from corporations, 13-35-227.

Political party not to endorse judicial candidate, 13-35-231.

Political criminal libel, 13-35-234.

Issues of law to be decided by court, 25-7-102.

Questions of law, 26-1-201.

Privileged communications, Title 26, ch. 1, part 8.

Media Confidentiality Act, Title 26, ch. 1, part 9.

Libel and slander generally, Title 27, ch. 1, part 8.

Statute of limitations on libel and slander actions, 27-2-204.

Defamatory material unregistrable as trademark, 30-13-303.

Defamation by consumer reporting agencies, 31-3-141.

Release of information by physician concerning minor, 41-1-403.

Intimidation, 45-5-203.

Bribery in official and political matters, 45-7-101.

Threats and other improper influence in official and political matters, 45-7-102.

Perjury, 45-7-201.

False swearing, 45-7-202.

Unsworn falsification to authorities, 45-7-203.

False alarms to agencies of public safety, 45-7-204.

False reports to law enforcement authorities, 45-7-205.

Unauthorized communication with person subject to official detention, 45-7-307.

Criminal contempt, 45-7-309.

Disorderly conduct, 45-8-101.

Incitement to riot, 45-8-104.

Criminal syndicalism, 45-8-105.

Failure to yield party line, 45-8-114.

Obscenity, 45-8-201.

Privacy in communications, 45-8-213.

Criminal defamation, 45-8-215.

Desecration of flags, 45-8-215.

Protection from defamation basic personal right, 49-1-101.

Limitation of political activities of employees of Department of Fish, Wildlife, and Parks, 87-1-204.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 621, 629, 630, 958, 963, 970, 1038.

Cross references, 1889 and 1972 Constitutions, Vol. II 646.

Debate — committee report, Trans. 1649 through 1651, 1675, 2491, 2493.

Debate — style and drafting report, Trans. 2481, 2921.

Delegate proposal, Vol. I 127.

Final consideration, Trans. 2633, 2634.

Text as adopted, Vol. II 1087.

Section 8. Right of participation. The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

Cross-References

Right to petition for redress, Art. II, sec. 6, Mont. Const.

Public participation in governmental operations, Title 2, ch. 3.

Montana Administrative Procedure Act, Title 2, ch. 4.

Municipal governments to develop procedures to permit and encourage participation, 7-1-4142.

School district trustee meetings, 20-3-322.

School district trustees' review of architectural services, 20-6-634.

School district trustees' emergency budget meeting, 20-9-165.

Violation of open meeting law, 45-7-401.

Disturbing or disrupting public meetings, 45-8-101.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 621, 630, 631, 958, 963, 967, 970, 1038, 1039.

Debate — committee report, Trans. 1651 through 1669, 1733, 2560, 2875.

Debate — style and drafting report, Trans. 2481, 2482, 2921.

Delegate proposal, Vol. I 133.

Final consideration, Trans. 2634 through 2636.

Text as adopted, Vol. II 1088.

Section 9. Right to know. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

Cross-References

Right of participation, Art. II, sec. 8, Mont. Const.

Legislative sessions, committee meetings, and hearings open to public, Art. V, sec. 10, Mont. Const.

Confidentiality in proceedings of Judicial Standards Commission, Art. VII, sec. 11, Mont. Const.; 3-1-1105.

Public participation in governmental operations, Title 2, ch. 3.

Montana Administrative Procedure Act, Title 2, ch. 4.

Public records, Title 2, ch. 6.

Filing and review of audits of political subdivisions — publication, 2-7-514, 2-7-515, 2-7-521.

Case register of Attorney General, 2-15-501.

State Records Committee, 2-15-1013.

Sittings of courts to be public, 3-1-312.

Confidentiality of proceedings in actions for dissolution, criminal conversation, or seduction, 3-1-313.

Proceedings of Judicial Nominating Commission, 3-1-1007.

Form and reporting of Supreme Court decisions, Title 3, ch. 2, part 6.

Election records open to public, 13-1-109.

Cigarette hearings, 16-11-103.

Ownership of public obligations — no inspection, 17-5-1106.

Notice of claim on performance, labor, or material bond, 18-2-204.

Control of state printing, Title 18, ch. 7, part 3.

Proceedings of Teachers' Retirement Board, 19-20-201.

Records of university student, 20-25-515, 20-25-516.

Deposit of state publications in state library, 22-1-213.

Montana Library Records Confidentiality Act, Title 22, ch. 1, part 11.

Preservation of records, Title 22, ch. 3, part 2.

Board of Horseracing records, 23-4-103.

Register of securities, 30-10-107.

Confidentiality of unfair trade practice investigation records, 30-14-114.

Confidentiality of reports and examinations of financial institutions to Department of Commerce, 32-1-234, 32-2-307.

Confidentiality of premarital test certificate, 40-1-208.

Confidentiality of proceedings of conciliation court, 40-3-116.

Confidentiality of child custody proceedings, 40-4-216.

Confidentiality of artificial insemination information, 40-6-106.

Confidentiality in paternity proceedings, 40-6-111, 40-6-114, 40-6-120.

Confidentiality of birth certificate under certain circumstances, 40-6-123.

Confidentiality and disclosure of child abuse and neglect records, 41-3-205.

Criminal justice information, Title 44, ch. 5.

Confidentiality of Parole Board records and proceedings, 46-23-108.

Confidentiality of records of the state, employers, labor organizations, and employment agencies with regard to age, sex, and race, 49-2-102.

Interpreters for the deaf in official proceedings, Title 49, ch. 4, part 5.

Vital statistics information, Title 50, ch. 15.

Confidentiality of inhospital medical staff committee information, Title 50, ch. 16, part 2.

Uniform Health Care Information Act, Title 50, ch. 16, part 5.

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

Confidentiality of vehicle accident reports, 61-7-114.

Natural areas preservation information, 76-12-116.

Confidentiality of data relating to agricultural chemical ground water protection, 80-15-108.

Strip- or underground-mining permit application, 82-4-222.

Opencut mining reclamation contract, plan, and amendments, 82-4-434.

Records of Board of Oil and Gas Conservation, 82-11-117.

Weather modification records, 85-3-303.

Renewable energy sources research information, 90-4-106.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 621, 631, 632, 958, 963, 970, 1039.

Debate — committee report, Trans. 1658, 1669 through 1680, 1733, 2176, 2201, 2560, 2578, 2582.

Debate — style and drafting report, Trans. 2482 through 2501, 2921.

Delegate proposals, Vol. I 111, 133, 157, 164, 276.

Final consideration, Trans. 2636, 2637.

Text as adopted, Vol. II 1088.

Section 10. Right of privacy. The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

Personal papers of Executive Branch officers, 2-6-304.

Confidentiality of court proceedings in actions for dissolution, criminal conversation, or seduction, 3-1-313.

Confidentiality of proceedings of Judicial Nominating Commission, 3-1-1007.

Confidentiality of Judicial Standards Commission, 3-1-1105.

Residences and records of university students protected, 20-25-511 through 20-25-516.

Montana Library Records Confidentiality Act, Title 22, ch. 1, part 11.

Privileged communications, Title 26, ch. 1, part 8; Art. V, M.R.Ev. (see Title 26, ch. 10).

Media Confidentiality Act, Title 26, ch. 1, part 9.

Confidentiality of unfair trade practices investigation, 30-14-114.

Consumer reporting agencies, Title 31, ch. 3, part 1.

Confidentiality of reports and examinations of financial institutions to Department of Commerce, 32-1-234, 32-2-307.

Confidentiality of hearing on unsafe operation or removal of officer of bank or trust, 32-1-910.

Confidentiality in electronic funds transfer systems, 32-6-105, 32-6-106.

Social workers — confidentiality of communications, 37-22-401.

Confidentiality of premarital test certificate, 40-1-208.

Confidentiality of conciliation court proceedings, 40-3-116.

Confidentiality of child custody proceedings, 40-4-216.

Confidentiality of artificial insemination information, 40-6-106.

Privilege of physician-patient communications suspended in certain circumstances, 40-6-106, 41-3-201, 41-3-204, 41-3-404.

Confidentiality in paternity proceedings, 40-6-111, 40-6-114, 40-6-120.

Confidentiality of birth certificate under certain circumstances, 40-6-123.

Confidentiality and disclosure of child abuse and neglect proceedings, 41-3-205.

Privilege of husband-wife communications suspended in certain actions, 41-3-404, 45-5-604.

Confidentiality of youth placement committee meetings and records, 41-5-125.

Criminal justice information, Title 44, ch. 5.

Criminal intelligence information section, Title 44, ch. 5, part 5.

Criminal intelligence information — protection of individual privacy, 44-5-515.

Criminal offense of violating privacy in communications, 45-8-213.

Confidentiality of Parole Board proceedings and records, 46-23-108.

Confidentiality of records of the state, employers, labor organizations, and employment agencies with regard to age, sex, and race, 49-2-102.

Confidentiality of inhospital medical staff committee information, Title 50, ch. 16, part 2.

Uniform Health Care Information Act, Title 50, ch. 16, part 5.

Confidentiality of vehicle accident reports, 61-7-114.

Confidentiality of data relating to agricultural chemical ground water protection, 80-15-108.

Information obtainable by Governor during energy emergency, 90-4-304.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 621, 632, 633, 958, 963, 970, 1039.

Debate — committee report, Trans. 1643, 1680 through 1685, 1688, 1730, 1733, 1850 through 1853, 2488.

Debate — style and drafting report, Trans. 2501, 2921.

Delegate proposals, Vol. I 98, 127.

Final consideration, Trans. 2637, 2638.

Text as adopted, Vol. II 1088.

Section 11. Searches and seizures. The people shall be secure in their persons, papers, homes and effects from unreasonable searches and seizures. No warrant to search any place, or seize any person or thing shall issue without describing the place to be searched or the person or thing to be seized, or without probable cause, supported by oath or affirmation reduced to writing.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Seizure as enforcement for delivery of official records, 2-6-108.

Application for search warrant in City Court, 3-11-102.

Search for and seizure of unlawful alcoholic beverages, 16-3-402, 16-6-102.

Forfeiture of seized resalable alcoholic beverages, 16-6-106, 16-6-107.

Seizure power of Department of Revenue in enforcing cigarette tax, 16-11-141, 16-11-147.

Search of university student's residence, 20-25-511 through 20-25-514.

Seizure power of Department of Commerce to enforce chapter on weights, measures, standards, and labeling, 30-12-209, 30-12-210.

Seizure related to controlled substances (drugs), Title 44, ch. 12.

Search and seizure generally, Title 46, ch. 5.

Motion to suppress illegally seized evidence, 46-13-302.

Search and seizure powers of game wardens, 87-1-506, 87-1-513.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 621, 633, 958, 963, 967, 970, 1039.

Cross-references, 1889 and 1972 Constitutions, Vol. II 646.

Debate — committee report, Trans. 1682 through 1689, 1751, 1851, 1852.

Debate — style and drafting report, Trans. 2501, 2502, 2921.

Delegate proposal, Vol. I 98.

Final consideration, Trans. 2638, 2639.

Text as adopted, Vol. II 1088.

Section 12. Right to bear arms. The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

Cross-References

Militia, Art. VI, sec. 13, Mont. Const.; Title 10, ch. 1.

Discharge of firearm from snowmobile prohibited, 23-2-633.

Justifiable use of force, Title 45, ch. 3.

Criminal provisions relating to weapons, Title 45, ch. 8, part 3.

Restriction on local government regulation of firearms, 45-8-351.

Issuance of permits by Department of Fish, Wildlife, and Parks to carry firearms only to officers and wardens, 87-1-201.

Use of firearms on or around public waters, 87-1-303.

Possession or discharge of firearms on game preserve prohibited, 87-5-401.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 621, 634, 958, 963, 970, 1039.

Cross-references, 1889 and 1972 Constitutions, Vol. II 646.

Debate — committee report, Trans. 1724 through 1744, 1832 through 1843, 2369.

Debate — style and drafting report, Trans. 2502, 2921.

Delegate proposals, Vol. I 78, 79.

Final consideration, Trans. 2639, 2640.

Text as adopted, Vol. II 1088.

Section 13. Right of suffrage. All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

Cross-References

Suffrage and elections, Art. IV, Mont. Const.

Elections, Title 13.

Soliciting information from electors prohibited, 13-35-211.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 621, 634, 958, 963, 970, 1039.

Cross-references, 1889 and 1972 Constitutions, Vol. II 646.

Debate — committee report, Trans. 1738, 1744, 1745.

Debate — style and drafting report, Trans. 2502, 2921.

Final consideration, Trans. 2640, 2641.
Text as adopted, Vol. II 1088.

Section 14. Adult rights. A person 18 years of age or older is an adult for all purposes, except that the legislature or the people by initiative may establish the legal age for purchasing, consuming, or possessing alcoholic beverages.

Cross-References

Declaration of rights, Art. II, Mont. Const.

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

Age requirements for election to certain state offices, Art. VI, sec. 3, Mont. Const.

Voter age qualifications, 13-1-111.

Unlawful possession of alcoholic beverages by persons under 21 years of age, 16-3-301, 16-6-314, 45-5-624.

Unlawful to sell or give alcoholic beverages to person under 21 years of age, 16-3-301, 45-5-623.

Age limit for sale of alcoholic beverages, 16-6-305.

Sale or distribution of tobacco products to persons under 18 years of age prohibited, 16-11-305.

Admittance of child to school, 20-5-101.

Age requirements for marriage, 40-1-202.

Minors and adults defined, 41-1-101.

Human Rights, Title 49.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 621, 635, 958, 963, 967, 970, 1039.

Debate — committee report, Trans. 1695, 1745 through 1749.

Debate — style and drafting report, Trans. 2502, 2921.

Delegate proposal, Vol. I 97.

Final consideration, Trans. 2641, 2642.

Text as adopted, Vol. II 1088.

Section 15. Rights of persons not adults. The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons.

Cross-References

Declaration of rights, Art. II, Mont. Const.

Adult rights, Art. II, sec. 14, Mont. Const.

Residence of minor, 1-1-215.

Regulation of sales by minors to pawnshops, 7-21-4208.

Establishment of curfew for minors, 7-32-2302.

Voter age qualifications, 13-1-111.

Unlawful possession of alcoholic beverages by persons under 21 years of age, 16-3-301, 16-6-314, 45-5-624.

Unlawful selling or giving of alcoholic beverages to persons under 21 years of age, 16-3-301, 16-6-305, 45-5-623.

Sale or distribution of tobacco products to persons under 18 years of age prohibited, 16-11-305.

Minor as beneficiary under state retirement system, 19-2-803.

Use of force by parent, guardian, or teacher, 20-4-302, 45-3-107.

Age requirements for school admission and compulsory attendance, 20-5-101 through 20-5-103.

Minors under 12 years of age to wear life preservers on boats, 23-2-521.

Minimum age for waterskiing activities, 23-2-529.

Minors prohibited from gambling, 23-4-301.

Right of minor to bring civil action, 27-1-511.

Effect of minority on statutes of limitation, 27-2-401.

Capacity of minors to contract, 28-2-201.

Contracts in restraint of marriage, 28-2-706.

Capacity of minor to appoint agent, 28-10-104, 28-10-704.

Effect of minority on negotiable instruments, 30-3-305.

Personal solicitation sales by minors, 30-14-502.

Bank deposits in minor's name, 32-1-444.

Savings and loan shares of minor, 32-2-401, 32-2-418.

Minor's accounts in credit unions, 32-3-504.

Contract of minor for insurance, 33-15-103.

Minor prohibited from serving on board of advisors or consultants of corporation sole, 35-3-208.

Employment of minors in liquor establishment, 39-2-306.

Age requirements for marriage, 40-1-202.

Termination of marriage, child custody, support, Title 40, ch. 4.

Enforcement of support, Title 40, ch. 5.

Parent and child, Title 40, ch. 6.

Uniform Child Custody Jurisdiction Act, Title 40, ch. 7.

Grandparent visitation, Title 40, ch. 9.

Rights and obligations of minors, Title 41, ch. 1.

Minors and adults defined, 41-1-101.

Child labor, Title 41, ch. 2.

Child abuse, neglect, and dependency, Title 41, ch. 3.

Interstate placement of children, Title 41, ch. 4.

Montana Youth Court Act, Title 41, ch. 5.

Interstate Compact on Juveniles, Title 41, ch. 6.

Missing children information program, Title 44, ch. 2, part 5.

Extension of time limitations on prosecution of certain crimes because of minority of victim, 45-1-205.

Consent of youth to criminal offense ineffective, 45-2-211.

Promoting prostitution of minor, 45-5-603, 45-5-622.

Nonsupport as criminal offense, 45-5-621.

Endangering welfare of children, 45-5-622.

Unlawful transactions with children, 45-5-623.

Sexual abuse of children, 45-5-625.

Ritual abuse of minor, 45-5-627.

Tobacco possession or consumption by minor prohibited, 45-5-637.

Providing obscene material to minors, 45-8-201.

Use of firearms by children under 14 years of age prohibited, 45-8-344, 45-8-345.

Human Rights, Title 49.

Creating hazard to minors, 50-30-220.

Public assistance — children, Title 52, ch. 2.

Youthful offenders, Title 52, ch. 5, part 1.

Age requirements for driver's license, 61-5-105, 61-5-106.

Headgear required for minor motorcycle riders, 61-9-417.

Guardianship and conservatorship, Title 72, ch. 5.

Transfers to minors, Title 72, ch. 26.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 621, 622, 635, 636, 958, 964, 967, 970, 971, 1039.

Debate — committee report, Trans. 1749 through 1753.

Debate — style and drafting report, Trans. 2502, 2503, 2921.

Delegate proposals, Vol. I 166, 199.

Final consideration, Trans. 2642, 2643.

Text as adopted, Vol. II 1088.

Section 16. The administration of justice. Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state. Right and justice shall be administered without sale, denial, or delay.

Cross-References

Due process of law, Art. II, sec. 17, Mont. Const.

State subject to suit, Art. II, sec. 18, Mont. Const.

Initiation of criminal proceedings, Art. II, sec. 20, Mont. Const.

Trial by jury, Art. II, sec. 26, Mont. Const.

The judiciary, Art. VII, Mont. Const.

Liability of notary public, 1-5-406.

Liability exposure of governmental entities and officers, Title 2, ch. 9, part 1.

Claims and actions against state and political subdivisions, Title 2, ch. 9, part 3.

Workers' Compensation Judge, 2-15-1707.

Courts and judicial officers generally, Title 3, ch. 1.

Immunity of civil defense workers, 10-3-111.

Civil Procedure, Title 25.

Evidence, Title 26.

Remedies, Title 27.

Limitation on punitive damages, 27-1-221.

Obligations imposed by law, Title 28, ch. 1, part 2.

Contracts exempting persons from liability, 28-2-702.

Unfair trade practices and consumer protection, Title 30, ch. 14, part 1.

Attorneys at law, Title 37, ch. 61.

Interspousal immunity abolished for intentional torts, 40-2-109.

Liability of minors, 41-1-201.

Enforcement of minor's rights, 41-1-202.

Immunity of medical examiner, 44-3-401.

Liability of law enforcement entity for assistance from another law enforcement entity, 44-11-102.

Criminal Procedure, Title 46.

Human Rights, Title 49.

Interpreters for the deaf in official proceedings, Title 49, ch. 4, part 5.

Immunity of landowner for mining operations, 82-2-306.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 622, 636, 637, 959, 964, 971, 1039.

Cross-references, 1889 and 1972 Constitutions, Vol. II 646.

Debate — committee report, Trans. 1020, 1021, 1024, 1753 through 1760, 1764, 1792, 2192, 2196, 2625.

Debate — style and drafting report, Trans. 2503, 2921.

Delegate proposals, Vol. I 88, 263, 318.

Final consideration, Trans. 2643, 2644.

Text as adopted, Vol. II 1088.

Section 17. Due process of law. No person shall be deprived of life, liberty, or property without due process of law.

Cross-References

Detention, Art. II, sec. 23, Mont. Const.

Jury trial, Art. II, sec. 26, Mont. Const.

Eminent domain, Art. II, sec. 29, Mont. Const.

Ex post facto — obligation of contracts — irrevocable privileges, Art. II, sec. 31, Mont. Const.

Actual and constructive notice, 1-1-217.

Notice and opportunity to be heard in governmental operations, Title 2, ch. 3, part 1.

Montana Administrative Procedure Act, Title 2, ch. 4.

Courts and judicial officers generally, Title 3.

Tax sales, Title 15, ch. 17.

Eminent domain power of Department of Fish, Wildlife, and Parks, 23-1-102, 87-1-209, 87-1-703, 87-1-709.

Civil Procedure, Title 25.

Credit rating — property right, 31-3-103.

Eminent domain power of rural cooperatives, 35-18-106.

Eminent domain power of cemetery association, 35-20-104.

Workers' compensation, Title 39, ch. 71.

Child abuse, neglect, and dependency, Title 41, ch. 3.

Criminal Procedure, Title 46.

Human Rights, Title 49.

Persons with developmental disabilities, Title 53, ch. 20.

Mentally ill persons, Title 53, ch. 21.

Acquisition of property for highways, Title 60, ch. 4, parts 1 and 4; Title 60, ch. 5, part 1.

Eminent domain power of Department of Transportation for airport purposes, 67-2-301.

Acquisition of property for airport purposes when zoning insufficient, 67-6-301.

Eminent domain power of municipality for airport purposes, 67-10-102, 67-10-201, 67-10-205, 67-10-221.

Eminent domain power of airport authority, 67-11-201, 67-11-204, 67-11-231.

Eminent domain power under extraterritorial airports section, 67-11-401.

Eminent domain generally, Title 70, ch. 30, part 1; Title 70, ch. 31, part 3.

Escheated estates, Title 72, ch. 14.

Eminent domain for open-pit mining, 82-2-221.

Eminent domain to acquire underground natural reservoirs, 82-10-303.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 622, 637, 959, 964, 971, 1039.

Cross-references, 1889 and 1972 Constitutions, Vol. II 646.

Debate — committee report, Trans. 1738, 1750, 1751, 1760.

Debate — style and drafting report, Trans. 2503, 2921.

Delegate proposals, Vol. I 312, 328.

Final consideration, Trans. 2644, 2645.

Text as adopted, Vol. II 1088.

Section 18. State subject to suit. The state, counties, cities, towns, and all other local governmental entities shall have no immunity from suit for injury to a person or property, except as may be specifically provided by law by a 2/3 vote of each house of the legislature.

Cross-References

Liability exposure of governmental entities, Title 2, ch. 9, part 1.

Claims and actions, Title 2, ch. 9, part 3.

Local government liability, 7-1-4125.

Immunity of civil defense personnel, 10-3-111.

Immunity of medical examiner, 44-3-401.

Immunity for official duties under grazing district laws, 76-16-319.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 622, 637, 638, 959, 964, 967, 968, 971, 1039, 1040.

Debate — committee report, Trans. 1760 through 1764.

Debate — style and drafting report, Trans. 2503, 2921.

Delegate proposal, Vol. I 124.

Final consideration, Trans. 2645 through 2647.

Text as adopted, Vol. II 1088.

Section 19. Habeas corpus. The privilege of the writ of habeas corpus shall never be suspended.

Cross-References

Supreme Court jurisdiction, Art. VII, sec. 2, Mont. Const.

Seal of court required, 3-1-206.

Writ may be issued and served on any day, 3-1-302.

Jurisdiction to issue writ, 3-2-212, 3-5-302, 3-5-311.

Revocation of suspended or deferred sentence — petition for postconviction relief, 46-21-101, 46-22-101.

Habeas corpus generally, Title 46, ch. 22.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 622, 638, 639, 959, 964, 971, 1040.

Cross-references, 1889 and 1972 Constitutions, Vol. II 646.

Debate — committee report, Trans. 1764.

Debate — style and drafting report, Trans. 2503, 2504, 2921.

Final consideration, Trans. 2647, 2648.

Text as adopted, Vol. II 1088.

Section 20. Initiation of proceedings. (1) Criminal offenses within the jurisdiction of any court inferior to the district court shall be prosecuted by complaint. All criminal actions in district court, except those on appeal, shall be prosecuted either by information, after examination and commitment by a magistrate or after leave granted by the court, or by indictment without such examination, commitment or leave.

(2) A grand jury shall consist of eleven persons, of whom eight must concur to find an indictment. A grand jury shall be drawn and summoned only at the discretion and order of the district judge.

Cross-References

The judiciary, Art. VII, Mont. Const.

The judiciary and courts, Title 3.

Montana Youth Court Act, Title 41, ch. 5.

Crimes, Title 45.

Criminal Procedure, Title 46.

Interpreters for the deaf in official proceedings, Title 49, ch. 4, part 5.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 622, 639, 959, 964, 968, 971, 1040.

Cross-references, 1889 and 1972 Constitutions, Vol. II 646.

Debate — committee report, Trans. 1764 through 1766.

Debate — style and drafting report, Trans. 2504, 2921.

Delegate proposal, Vol. I 89.

Final consideration, Trans. 2648, 2649.

Text as adopted, Vol. II 1088.

Section 21. Bail. All persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

Cross-References

Index of bonds given in criminal cases, 3-5-506.

Arrest and bail in civil actions, Title 27, ch. 16.

Attorney prohibited from becoming surety on bond, 37-61-419.

Bail — youth placed in detention or shelter care facility, 41-5-309.

Acceptance of bail by highway patrol officer, Title 44, ch. 1, part 11.

Crimes, Title 45.

Bail-jumping as criminal offense, 45-7-308.

Bail, Title 46, ch. 9.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 622, 639, 640, 959, 964, 968, 971, 1040, 1080, 1108.

Cross-references, 1889 and 1972 Constitutions, Vol. II 646.

Debate — adoption schedule, Trans. 2997, 3001, 3002.

Debate — committee report, Trans. 1771.

Debate — style and drafting report, Trans. 2504, 2921.

Final consideration, Trans. 2649, 2650.

Text as adopted, Vol. II 1088.

Section 22. Excessive sanctions. Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted.

Cross-References

Bail, Art. II, sec. 21, Mont. Const.; Title 46, ch. 9.

Attorney prohibited from becoming surety on bond, 37-61-419.

Crimes, Title 45.

Sentencing and judgment, Title 46, ch. 18.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 622, 640, 959, 964, 968, 971, 1040.

Cross-references, 1889 and 1972 Constitutions, Vol. II 646.

Debate — committee report, Trans. 1771.

Debate — style and drafting report, Trans. 2504, 2921.

Delegate proposal, Vol. I 77.

Final consideration, Trans. 2650, 2651.

Text as adopted, Vol. II 1088.

Section 23. Detention. No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of trial, he shall be discharged upon giving the same; if he cannot give security, his deposition shall be taken in the manner provided by law, and in the presence of the accused and his counsel, or without their presence, if they shall fail to attend the examination after reasonable notice of the time and place thereof.

Cross-References

Bail, Art. II, sec. 21, Mont. Const.; Title 46, ch. 9.

Excessive sanctions, Art. II, sec. 22, Mont. Const.

Attorney prohibited from becoming surety on bond, 37-61-419.

Crimes, Title 45.

Investigative subpoenas, Title 46, ch. 4, part 3.

Ensuring availability of witness or preservation of evidence after preliminary examination, information, or indictment, Title 46, ch. 11, part 6.

Subpoenas and witnesses, Title 46, ch. 15, part 1.

Depositions, Title 46, ch. 15, part 2.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 622, 623, 640, 959, 960, 965, 968, 971, 972, 1040.

Cross-references, 1889 and 1972 Constitutions, Vol. II 646.

Debate — committee report, Trans. 1771 through 1776, 1781.

Debate — style and drafting report, Trans. 2504 through 2506, 2921.

Final consideration, Trans. 2651, 2652.

Text as adopted, Vol. II 1089.

Section 24. Rights of the accused. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same.

Cross-References

Bail, Art. II, sec. 21, Mont. Const.; Title 46, ch. 9.

Excessive sanctions, Art. II, sec. 22, Mont. Const.

Detention, Art. II, sec. 23, Mont. Const.

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

Trial by jury, Art. II, sec. 26, Mont. Const.; 46-16-110.

Courts generally, Title 3, ch. 1.

Jury selection, Title 3, ch. 15.

Attorneys at law, Title 37, ch. 61.

Montana Youth Court Act, Title 41, ch. 5.

Crimes, Title 45.

Criminal procedure generally, Title 46.

Venue, Title 46, ch. 3.

Right to counsel, 46-7-102; Title 46, ch. 8; 46-18-223.

Charging offenses, 46-11-401.

Effect of former prosecutions, Title 46, ch. 11, part 5.

Plea bargain agreements, 46-12-204.

Change of venue, 46-13-203, 46-13-204.

Subpoenas and witnesses, Title 46, ch. 15, part 1.

Depositions, Title 46, ch. 15, part 2.

Discovery of witnesses — immunity, Title 46, ch. 15, part 3.

Interpreters for the deaf in official proceedings, Title 49, ch. 4, part 5.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 623, 640, 641, 960, 965, 968, 972, 1040.

Cross-references, 1889 and 1972 Constitutions, Vol. II 646.

Debate — committee report, Trans. 1776.

Debate — style and drafting report, Trans. 2506, 2921.

Final consideration, Trans. 2652, 2653.

Text as adopted, Vol. II 1089.

Section 25. Self-incrimination and double jeopardy. No person shall be compelled to testify against himself in a criminal proceeding. No person shall be again put in jeopardy for the same offense previously tried in any jurisdiction.

Cross-References

Rights of accused, Art. II, sec. 24, Mont. Const.

Extent of self-incrimination protection in proceedings in aid of execution, 25-14-106.

Witness required to answer — exceptions, 26-2-302.

Right against self-incrimination not waived by testimony with respect to matters relating only to credibility, Rule 608, M.R.Ev. (see Title 26, ch. 10).

Extent of self-incrimination protection in investigations by Securities Commissioner, 30-10-304.

Extent of self-incrimination protection in unfair trade practices and consumer protection matters, 30-14-114, 30-14-221.

Double jeopardy protection in suspended Youth Court proceedings, 41-5-524.

Crimes, Title 45.

Protection against self-incrimination under investigative subpoena, 46-4-305.

Effect of former prosecutions, Title 46, ch. 11, part 5.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 623, 641, 960, 965, 968, 972, 1040.

Cross-references, 1889 and 1972 Constitutions, Vol. II 646.

Debate — committee report, Trans. 1751, 1776 through 1779.

Debate — style and drafting report, Trans. 2506, 2921.

Delegate proposals, Vol. I 200, 251.

Final consideration, Trans. 2653, 2654.

Text as adopted, Vol. II 1089.

Section 26. Trial by jury. The right of trial by jury is secured to all and shall remain inviolate. But upon default of appearance or by consent of the parties expressed in such manner as the law may provide, all cases may be tried without a jury or before fewer than the number of jurors provided by law. In all civil actions, two-thirds of the jury may render a verdict, and a verdict so rendered shall have the same force and effect as if all had concurred therein. In all criminal actions, the verdict shall be unanimous.

Cross-References

Jury to determine law and facts in cases of libel and slander, Art. II, sec. 7, Mont. Const.

Rights of accused, Art. II, sec. 24, Mont. Const.

Mileage allowance for jurors, 2-18-503, 2-18-504.

State employees as jurors, 2-18-619.

Failure to attend or other acts of jurors as contempts, 3-1-501.

Power of District Court Judge to obtain jury, 3-5-311.

Record of jurors kept by Clerk of Court, 3-5-510.

Docket in Justice's Court — information on jurors, 3-10-501.

Juries and jurors, Title 3, ch. 15.

Issue of law determined by court — exception, 25-7-102.

Issue of fact determined by jury, 25-7-103.

Selection of jury — civil, Title 25, ch. 7, part 2.

Order and conduct of trial by jury — civil, Title 25, ch. 7, part 3.

Conduct of jury — civil, Title 25, ch. 7, part 4.

Jury verdict — civil, Title 25, ch. 7, part 5.

Irregularity of jury proceedings or jury misconduct as grounds for new trial, 25-11-102.

Jury trial of right — demand — waiver, Rule 38, M.R.Civ.P. (see Title 25, ch. 20).

Trial by jury, Rule 39, M.R.Civ.P. (see Title 25, ch. 20).

Jurors, Rule 47, M.R.Civ.P. (see Title 25, ch. 20).

Jurors' verdict, Rule 48, M.R.Civ.P. (see Title 25, ch. 20).

Special verdicts and interrogatories, Rule 49, M.R.Civ.P. (see Title 25, ch. 20).

Jury instructions, Rule 51, M.R.Civ.P. (see Title 25, ch. 20).

Jury in default proceedings, Rule 55, M.R.Civ.P. (see Title 25, ch. 20).

Jury trial in declaratory judgment action, Rule 57, M.R.Civ.P. (see Title 25, ch. 20); 27-8-302.

Jury trial in Municipal Courts, 25-30-105.

Jury trial in Justices' Courts, 25-31-803.

Jury to determine questions of fact, 26-1-202.

Jury to determine effect or value of evidence, 26-1-203.

Jury exclusive judge of credibility of witness, 26-1-302.

Instructions to jury on evaluation of evidence, 26-1-303.

Inference of jury, 26-1-501.

Presumption that jury passed on all issues, 26-1-602.

Hearings on question of admissibility outside presence of jury, Rule 104, M.R.Ev. (see Title 26, ch. 10); 46-16-201.

Competency of juror as witness, Rule 606, M.R.Ev. (see Title 26, ch. 10).

Objections to calling of witness by court or interrogation of witness by court allowed to be made when jury not present, Rule 614, M.R.Ev. (see Title 26, ch. 10).

Jury trial in mandamus proceeding, 27-26-303.

Jury trial in quo warranto proceeding, 27-28-207.

Jury trial in Youth Court proceedings, 41-5-1502.

Juror defined, 45-2-101.

Bribery of juror as criminal offense, 45-7-101.

Communication with juror as criminal offense, 45-7-102.

Failure to obey mandate, process, or notice relative to juries as criminal contempt, 45-7-309.

Selection of jury — criminal, Title 46, ch. 16, part 1.

Conduct of jury — criminal, Title 46, ch. 16, part 5.

Jury trial in estate proceedings, 72-1-208.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 623, 641, 642, 960, 965, 968, 972, 1041.

Cross-references, 1889 and 1972 Constitutions, Vol. II 646.

Debate — committee report, Trans. 1751, 1780 through 1792.

Debate — style and drafting report, Trans. 2506, 2507, 2921.

Delegate proposal, Vol. I 89.

Final consideration, Trans. 2654, 2655.

Text as adopted, Vol. II 1089.

Section 27. Imprisonment for debt. No person shall be imprisoned for debt except in the manner provided by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud.

Cross-References

Garnishment of earnings, 25-13-614.

Arrest for defrauding creditors, 27-16-102.

Fraud, 28-2-404 through 28-2-406.

Assignment for benefit of creditors — attachment of assignee, 31-2-220.

Nonsupport as criminal offense, 45-5-621.

Endangering welfare of children by nonsupport, 45-5-622.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 623, 642, 960, 965, 968, 972, 1041.

Cross-references, 1889 and 1972 Constitutions, Vol. II 646.

Debate — committee report, Trans. 1792 through 1800.

Debate — style and drafting report, Trans. 2507, 2921.

Final consideration, Trans. 2655, 2656.

Text as adopted, Vol. II 1089.

Section 28. Rights of the convicted. Laws for the punishment of crime shall be founded on the principles of prevention and reformation. Full rights are restored by termination of state supervision for any offense against the state.

Cross-References

Declaration of rights, Art. II, Mont. Const.

Individual serving sentence for felony in penal institution not qualified elector, Art. IV, sec. 2, Mont. Const.; 13-1-111.

Individual convicted of felony ineligible to hold public office until discharge, Art. IV, sec. 4, Mont. Const.

State institutions, Art. XII, sec. 3, Mont. Const.

Certain former offenders not competent to act as juror, 3-15-303.

Gambling — qualifications for licensure, 23-5-176.

Incapacity of persons deprived of civil rights to contract, 28-2-201.

Effect of conviction of certain crimes on registration as securities dealer, 30-10-201.

Inclusion of criminal records on consumer report, 31-3-112, 31-3-126.

Conviction of crime against banking laws prohibiting election as bank director, 32-1-322.

Employment in bank of persons convicted of violation of banking laws — disclosure, 32-1-462.

Licensure of former criminal offenders in occupations and professions, Title 37, ch. 1, part 2.

Effect of former conviction on granting of outfitter's license, 37-47-302, 37-47-341.

Prisoner entitled to consult with attorney, 37-61-418.

Crimes, Title 45.

Mistreating prisoners, 45-5-204.

Correctional policy of state, 46-18-101.

Effect of conviction — restoration of rights, 46-18-801.

Execution of criminal judgment, Title 46, ch. 19.

Probation, parole, and clemency, Title 46, ch. 23.

Human Rights, Title 49.

Corrections facilities, Title 53, ch. 30.

Effect of former conviction on registration and sale of out-of-state subdivision land, 76-4-1236.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 623, 642, 643, 960, 965, 968, 972, 1041, 1080, 1108.

Cross-references, 1889 and 1972 Constitutions, Vol. II 646.

Debate — adoption schedule, Trans. 2997.

Debate — committee report, Trans. 1076, 1800 through 1825, 1846 through 1848, 2305.

Debate — style and drafting report, Trans. 2507 through 2509, 2921.

Delegate proposals, Vol. I 128, 218, 317.

Final consideration, Trans. 2656 through 2658.

Text as adopted, Vol. II 1089.

Section 29. Eminent domain. Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner prevails.

Cross-References

Due process, Art. II, sec. 17, Mont. Const.

Eminent domain power of Department of Fish, Wildlife, and Parks, 23-1-102, 87-1-209, 87-1-703, 87-1-709.

Eminent domain power of rural cooperatives, 35-18-106.

Eminent domain power of cemetery association, 35-20-104.

Acquisition of property for highways, Title 60, ch. 4, parts 1 and 4; Title 60, ch. 5, part 1.

Eminent domain power of Department of Transportation for airport purposes, 67-2-301.

Acquisition of property for airport purposes when zoning insufficient, 67-6-301.

Eminent domain power of municipality for airport purposes, 67-10-102, 67-10-201, 67-10-205, 67-10-221.

Eminent domain power of airport authority, 67-11-201, 67-11-204, 67-11-231.

Eminent domain power under extraterritorial airports section, 67-11-231.

Eminent domain generally, Title 70, ch. 30.

Eminent domain power for open-pit mining, 82-2-221.

Eminent domain power to acquire underground natural reservoirs, 82-10-303.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 623, 643, 644, 711, 960, 966, 972, 1041.

Cross-references, 1889 and 1972 Constitutions, Vol. II 646.

Debate — committee report, Trans. 1825 through 1828.

Debate — style and drafting report, Trans. 2509, 2921.

Delegate proposals, Vol. I 96, 177, 252, 308.

Final consideration, Trans. 2658, 2659.

Text as adopted, Vol. II 1089.

Section 30. Treason and descent of estates. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislature; no conviction shall cause the loss of property to the relatives or heirs of the convicted. The estates of suicides shall descend or vest as in cases of natural death.

Cross-References

Importation of armed persons, Art. II, sec. 33, Mont. Const.

One witness insufficient to prove treason, 26-1-301.

Criminal syndicalism, 45-8-105.

Bringing armed persons into state, 45-8-106.

Evidence in trial for treason, 46-16-202.

Estates, Title 72.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 623, 624, 644, 960, 966, 968, 972, 1041.

Cross-references, 1889 and 1972 Constitutions, Vol. II 646.

Debate — committee report, Trans. 1828, 1829.

Debate — style and drafting report, Trans. 2509, 2921.

Final consideration, Trans. 2659, 2660.

Text as adopted, Vol. II 1089.

Section 31. Ex post facto, obligation of contracts, and irrevocable privileges. No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature.

Cross-References

Legislature not to pass laws retrospective in operation, Art. XIII, sec. 1, Mont. Const.

When laws retroactive, 1-2-109.

Statutes subject to repeal, 1-2-110.

Effective date, 1-2-201.

Contracts, Title 28.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 624, 644, 961, 966, 968, 973, 1041.

Cross-references, 1889 and 1972 Constitutions, Vol. II 646.

Debate — committee report, Trans. 1829, 2266 through 2268.

Debate — style and drafting report, Trans. 2509, 2510, 2921.

Delegate proposal, Vol. I 207.

Final consideration, Trans. 2660, 2661.

Text as adopted, Vol. II 1089.

Section 32. Civilian control of the military. The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner provided by law.

Cross-References

Militia, Title 10, ch. 1.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 624, 645, 961, 966, 968, 973, 1041.

Cross-references, 1889 and 1972 Constitutions, Vol. II 646.

Debate — committee report, Trans. 1829 through 1832.

Debate — style and drafting report, Trans. 2510, 2921.

Delegate proposal, Vol. I 78.

Final consideration, Trans. 2661, 2662.

Text as adopted, Vol. II 1089.

Section 33. Importation of armed persons. No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace, or the suppression of domestic violence, except upon the application of the legislature, or of the governor when the legislature cannot be convened.

Cross-References

Treason, Art. II, sec. 30, Mont. Const.

Civilian control of military, Art. II, sec. 32, Mont. Const.

Militia, Title 10, ch. 1.

Bringing armed persons into state as criminal offense, 45-8-106.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 624, 645, 961, 966, 968, 973, 1041, 1042.

Cross-references, 1889 and 1972 Constitutions, Vol. II 646.

Debate — committee report, Trans. 1832.

Debate — style and drafting report, Trans. 2510, 2921.

Final consideration, Trans. 2662, 2663.

Text as adopted, Vol. II 1089.

Section 34. Unenumerated rights. The enumeration in this constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

Cross-References

Human Rights, Title 49.

Right to fish navigable waters, 87-2-305.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 624, 645, 961, 966, 968, 973, 1042.

Cross-references, 1889 and 1972 Constitutions, Vol. II 646.

Debate — committee report, Trans. 1832.

Debate — style and drafting report, Trans. 2510, 2921.

Final consideration, Trans. 2663, 2664.

Text as adopted, Vol. II 1089.

Section 35. Servicemen, servicewomen, and veterans. The people declare that Montana servicemen, servicewomen, and veterans may be given special considerations determined by the legislature.

Cross-References

Equal protection, Art. II, sec. 4, Mont. Const.

Board of Veterans' Affairs, 2-15-1205.

Militia, Title 10, ch. 1.

Veterans, Title 10, ch. 2.

Registration of electors in United States service, 13-2-211 through 13-2-215.

Absentee voting of electors in United States service, 13-13-212.

Property held in trust for incompetent veteran exempt from property taxation, 15-6-203.

Veterans' clubhouse exempt from property taxation, 15-6-203.

Certain disabled veterans' residences exempt from property taxation, 15-6-211.

Veterans' bonus and military salary exempt from income tax, 15-30-116.

Beer license for veterans' organizations, 16-4-105, 16-4-301, 16-4-501.

All-beverages license for veterans' organizations, 16-4-201, 16-4-301, 16-4-501.

Pledge of portion of cigarette tax proceeds to pay veterans' nursing home bonds, 16-11-119.

Veterans' and pioneers' memorial building, Title 22, ch. 3, part 3.

Veterans' public employment preference, Title 39, ch. 29.

Reemployment of veteran highway patrol officers, 44-1-404.

Veterans in hospitals or institutions exempt from fishing license requirements, 87-2-802.

Housing developments for veterans, 90-6-104.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2933, 2934.

Committee report, Vol. II 961, 966, 973, 1042.

Cross-references, 1889 and 1972 Constitutions, Vol. II 646.

Debate — committee report, Trans. 1842, 1843, 2271, 2273.

Debate — style and drafting report, Trans. 2510, 2921.

Delegate proposal, Vol. I 326.

Final consideration, Trans. 2664, 2665.

Text as adopted, Vol. II 1090.

ARTICLE III

GENERAL GOVERNMENT

Section
1. Separation of powers.
2. Continuity of government.
3. Oath of office.
4. Initiative.
5. Referendum.
6. Elections.
7. Number of electors.
8. Prohibition.
9. Gambling.

Article Cross-References

Popular sovereignty, Art. II, sec. 1, Mont. Const.

Self-government, Art. II, sec. 2, Mont. Const.

Right of participation in government, Art. II, sec. 8, Mont. Const.

Right to know, Art. II, sec. 9, Mont. Const.

Constitutional revision, Art. XIV, Mont. Const.

Section 1. Separation of powers. The power of the government of this state is divided into three distinct branches—legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

Cross-References

Legislative Branch, Art. V, Mont. Const.; Title 5.

Executive Branch, Art. VI, Mont. Const.

Judicial Branch, Art. VII, Mont. Const.

Departments and institutions, Art. XII, Mont. Const.

Government Structure and Administration, Title 2.

Executive Branch officers and agencies, Title 2, ch. 15.

The judiciary and courts, Title 3.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 3009, 3010.

Committee report, Vol. II 815, 818, 1019, 1022, 1025, 1043.

Cross-references, 1889 and 1972 Constitutions, Vol. II 826.

Debate — committee report, Trans. 1124, 2377, 2378, 2383, 2689, 2690 through 2695.

Debate — style and drafting report, Trans. 2820, 2828 through 2831, 2921, 2922, 2996.

Delegate proposal, Vol. I 186.

Final consideration, Trans. 2842, 2843.

Text as adopted, Vol. II 1090.

Section 2. Continuity of government. The seat of government shall be in Helena, except during periods of emergency resulting from disasters or enemy attack. The legislature may enact laws to insure the continuity of government during a period of emergency without regard for other provisions of the constitution. They shall be effective only during the period of emergency that affects a particular office or governmental operation.

Cross-References

Executive Branch officers to reside at seat of government, Art. VI, sec. 1, Mont. Const.; 2-16-111.

Supreme Court to meet at seat of government, 3-2-303.

Legislature to meet at seat of government, 5-2-103.

The Continuity in Government Act, Title 10, ch. 3, part 6.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 3009, 3010.

Committee report, Vol. II 815, 818, 819, 1019, 1022, 1025, 1043.

Cross-references, 1889 and 1972 Constitutions, Vol. II 826.

Debate — committee report, Trans. 2695.

Debate — style and drafting report, Trans. 2820, 2921, 2922, 2996.

Delegate proposals, Vol. I 278, 279.

Final consideration, Trans. 2843 through 2845.

Text as adopted, Vol. II 1090.

Section 3. Oath of office. Members of the legislature and all executive, ministerial and judicial officers, shall take and subscribe the following oath or affirmation, before they enter upon the duties of their offices: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)." No other oath, declaration, or test shall be required as a qualification for any office or public trust.

Cross-References

Oath of Constitutional Convention delegates, Art. XIV, sec. 6, Mont. Const.

Teachers' Retirement Board members required to take oath, 2-15-1010.

Board of Water Well Contractors required to take oath, 2-15-3307.

Oaths — form — before whom — when, 2-16-211.

Oath of District Court Judges, 3-5-201.

Oath of Justices of the Peace, 3-10-202.

Municipal officers required to take oath, 7-1-4137.

Oath for municipal officers, 7-3-1259.

County Auditor required to take oath, 7-6-2404.

Community college district trustees required to take oath, 20-15-210, 20-15-222.

Assistant representative on Interstate Oil Compact Commission required to take oath, 82-11-304.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 3009, 3010.

Committee report, Vol. II 815, 819, 1019, 1022, 1025, 1043.

Cross-references, 1889 and 1972 Constitutions, Vol. II 826.

Debate — committee report, Trans. 2695.

Debate — style and drafting report, Trans. 2820, 2921, 2922, 2996.

Delegate proposal, Vol. I 125.

Final consideration, Trans. 2845, 2846.

Text as adopted, Vol. II 1090.

Section 4. Initiative. (1) The people may enact laws by initiative on all matters except appropriations of money and local or special laws.

(2) Initiative petitions must contain the full text of the proposed measure, shall be signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts and the total number of signers must be at least five percent of the total qualified electors of the state. Petitions shall be filed with the secretary of state at least three months prior to the election at which the measure will be voted upon.

(3) The sufficiency of the initiative petition shall not be questioned after the election is held.

Cross-References

Referendum, Art. III, sec. 5, Mont. Const.

Elections, Art. III, sec. 6, Mont. Const.

Number of electors, Art. III, sec. 7, Mont. Const.

Inapplicable to constitutional revision, Art. III, sec. 8, Mont. Const.

Signature of Governor not required, Art. VI, sec. 10, Mont. Const.

Initiative and referendum in local government units, Art. XI, sec. 8, Mont. Const.

Initiative for Constitutional Convention, Art. XIV, sec. 2, Mont. Const.

Constitutional amendment by initiative, Art. XIV, sec. 9, Mont. Const.

Montana Recall Act, Title 2, ch. 16, part 6.

Initiative procedures, Title 13, ch. 27.

Verification of signatures by county officials — allocating voters following reapportionment, 13-27-303.

Statutory appropriations, Title 17, ch. 7, part 5.

Initiative or referendum required to approve construction of nuclear facility, 75-20-201.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 3009, 3010.

Committee report, Vol. II 815, 816, 819, 820, 1019, 1020, 1022, 1023, 1025, 1043.

Cross-references, 1889 and 1972 Constitutions, Vol. II 826.

Debate — committee report, Trans. 2689, 2695 through 2717, 2780, 2781, 2785, 2786.

Debate — style and drafting report, Trans. 2820 through 2825, 2921, 2922, 2996.

Delegate proposals, Vol. I 257, 258, 277, 278.

Final consideration, Trans. 2846, 2847.

Text as adopted, Vol. II 1090.

Section 5. Referendum. (1) The people may approve or reject by referendum any act of the legislature except an appropriation of money. A referendum shall be held either upon order by the legislature or upon petition signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts. The total number of signers must be at least five percent of the qualified electors of the state. A referendum petition shall be filed with the secretary of state no later than six months after adjournment of the legislature which passed the act.

(2) An act referred to the people is in effect until suspended by petitions signed by at least 15 percent of the qualified electors in a majority of the legislative representative districts. If so suspended the act shall become operative only after it is approved at an election, the result of which has been determined and declared as provided by law.

Cross-References

Initiative, Art. III, sec. 4, Mont. Const.

Elections, Art. III, sec. 6, Mont. Const.

Number of qualified electors, Art. III, sec. 7, Mont. Const.

Inapplicable to constitutional revision, Art. III, sec. 8, Mont. Const.

Signature of Governor not required, Art. VI, sec. 10, Mont. Const.

Initiative and referendum in local government units, Art. XI, sec. 8, Mont. Const.

Referendum to call Constitutional Convention, Art. XIV, sec. 1, Mont. Const.

Constitutional amendment by referendum, Art. XIV, sec. 8, Mont. Const.

Referendum procedures, Title 13, ch. 27.

Verification of signatures by county officials — allocating voters following reapportionment, 13-27-303.

Statutory appropriations, Title 17, ch. 7, part 5.

Initiative or referendum required to approve construction of nuclear facility, 75-20-201.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 3009, 3010.

Committee report, Vol. II 816, 820, 1020, 1023, 1025, 1043, 1044.

Cross-references, 1889 and 1972 Constitutions, Vol. II 826.

Debate — committee report, Trans. 2717, 2718.

Debate — style and drafting report, Trans. 2822, 2823, 2825, 2826, 2921, 2922, 2996.

Delegate proposals, Vol. I 257, 258, 277, 278.

Final consideration, Trans. 2847, 2848.
Text as adopted, Vol. II 1090.

Section 6. Elections. The people shall vote on initiative and referendum measures at the general election unless the legislature orders a special election.

Cross-References

Initiative, Art. III, sec. 4, Mont. Const.

Referendum, Art. III, sec. 5, Mont. Const.

Inapplicable to constitutional revision, Art. III, sec. 8, Mont. Const.

Definition of general election for purposes of ballot issues, 13-1-101(8).

Times for holding general elections, 13-1-104.

Notice of special election, 13-1-108.

Initiative and referendum procedures, Title 13, ch. 27.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 3009, 3010.

Committee report, Vol. II 816, 820, 1020, 1023, 1025, 1044.

Cross-references, 1889 and 1972 Constitutions, Vol. II 826.

Debate — committee report, Trans. 2718.

Debate — style and drafting report, Trans. 2826, 2921, 2922, 2996.

Delegate proposals, Vol. I 258, 277.

Final consideration, Trans. 2848, 2849.

Text as adopted, Vol. II 1090.

Section 7. Number of electors. The number of qualified electors required in each legislative representative district and in the state shall be determined by the number of votes cast for the office of governor in the preceding general election.

Cross-References

Initiative, Art. III, sec. 4, Mont. Const.

Referendum, Art. III, sec. 5, Mont. Const.

Districting and apportionment, Art. V, sec. 14, Mont. Const.

Districting and Apportionment Commission, Title 5, ch. 1.

Times for holding general elections, 13-1-104.

Election records to be maintained by Secretary of State, 13-1-204.

Report of state canvass filed in Office of Secretary of State, 13-15-506.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 3009, 3010.

Committee report, Vol. II 816, 821, 1020, 1023, 1025, 1044.

Cross-references, 1889 and 1972 Constitutions, Vol. II 826.

Debate — committee report, Trans. 2718, 2719.

Debate — style and drafting report, Trans. 2826, 2827, 2921, 2922, 2996.

Delegate proposals, Vol. I 258, 277.

Final consideration, Trans. 2849 through 2851.

Text as adopted, Vol. II 1090.

Section 8. Prohibition. The provisions of this Article do not apply to CONSTITUTIONAL REVISION, Article XIV.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 3009, 3010.

Committee report, Vol. II 816, 821, 1020, 1023 through 1025, 1044.

Cross-references, 1889 and 1972 Constitutions, Vol. II 826.

Debate — committee report, Trans. 2720.

Debate — style and drafting report, Trans. 2827, 2921, 2922, 2996.

Final consideration, Trans. 2851, 2852.

Text as adopted, Vol. II 1090.

Section 9. Gambling. All forms of gambling, lotteries, and gift enterprises are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum.

Cross-References

Initiative, Art. III, sec. 4, Mont. Const.

Referendum, Art. III, sec. 5, Mont. Const.

Procedures for initiative and referendum, Title 13, ch. 27.

Parimutuel betting, Title 23, ch. 4, part 3.

Gambling, Title 23, ch. 5.

Video gambling machine control law, Title 23, ch. 5, part 6.

State lottery, Title 23, ch. 7.

Fights between animals unlawful, 45-8-211.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 3009, 3010.

Committee report, Vol. II 816, 822, 825, 1020, 1024, 1025, 1044, 1080, 1081, 1108.

Cross-references, 1889 and 1972 Constitutions, Vol. II 826.

Debate — adoption schedule, Trans. 2997.

Debate — committee report, Trans. 2728 through 2760.

Debate — style and drafting report, Trans. 2828, 2921, 2922, 2996.

Delegate proposals, Vol. I 115, 121, 237, 247.

Final consideration, Trans. 2853, 2854.

Text as adopted, Vol. II 1090.

ARTICLE IV

SUFFRAGE AND ELECTIONS

Section
1. Ballot.
2. Qualified elector.
3. Elections.
4. Eligibility for public office.
5. Result of elections.
6. Privilege from arrest.
7. Ballot issues — challenges — elections.
8. Limitation on terms of office.

Article Cross-References

Popular sovereignty, Art. II, sec. 1, Mont. Const.

Self-government, Art. II, sec. 2, Mont. Const.

General government, Art. III, Mont. Const.

Legislative Branch, Art. V, Mont. Const.

Executive Branch, Art. VI, Mont. Const.

Judicial Branch, Art. VII, Mont. Const.

Elections, Title 13.

Section 1. Ballot. All elections by the people shall be by secret ballot.

Cross-References

Elections by secret ballot, 13-1-102.

Secrecy required when aiding disabled elector, 13-13-119.

Voting machines to allow elector to vote in secrecy, 13-17-103.

Criminal provisions relating to secrecy, 13-35-201.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2934, 2935.

Committee report, Vol. I 336, 337, 341; Vol. II 845, 847, 1045.

Cross-references, 1889 and 1972 Constitutions, Vol. I 344.

Debate — committee report, Trans. 391, 422, 532.

Debate — style and drafting report, Trans. 1185, 1196, 1197, 2922.

Delegate proposal, Vol. I 191.

Final consideration, Trans. 1861, 1862.

Text as adopted, Vol. II 1091.

Section 2. Qualified elector. Any citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court.

Cross-References

Adult rights, Art. II, sec. 14, Mont. Const.

Rights of convicted, Art. II, sec. 28, Mont. Const.

Rules for determining residence generally, 1-1-215.

Electors as part of political body, 1-1-401.

State residency not required to vote on question of creation of county water/sewer district, 7-13-2212.

Qualifications of voter, 13-1-111.

Registration generally, Title 13, ch. 2.

Challenges of voter qualifications prior to election, 13-2-404.

Change of residence to another county within 45 days of election, 13-2-514.

Qualification of elector in school elections, 20-20-301.

Definition of felony, 45-2-101.

Right to hold elected office, 49-1-202.

Rights and duties of elector, 49-1-203.

Persons with developmental disabilities, Title 53, ch. 20.

Mentally ill individuals, Title 53, ch. 21.

Persons under disability, guardianship, and conservatorship, Title 72, ch. 5.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2934, 2935.

Committee report, Vol. I 336, 337, 339 through 341; Vol. II 845 through 847, 1045.

Cross-references, 1889 and 1972 Constitutions, Vol. I 344.

Debate — committee report, Trans. 392 through 400, 422, 532.

Debate — style and drafting report, Trans. 1185, 1196, 1197, 2922.

Delegate proposals, Vol. I 191, 260, 330, 332.

Final consideration, Trans. 1862, 1863.

Text as adopted, Vol. II 1091.

Section 3. Elections. The legislature shall provide by law the requirements for residence, registration, absentee voting, and administration of elections. It may provide for a system of poll booth registration, and shall insure the purity of elections and guard against abuses of the electoral process.

Cross-References

Elections, Title 13.

School elections, Title 20, ch. 20.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2934, 2935.

Committee report, Vol. I 336, 338, 341 through 343; Vol. II 845, 847, 1045.

Cross-references, 1889 and 1972 Constitutions, Vol. I 344.

Debate — committee report, Trans. 400 through 413, 422, 428 through 452, 467, 532, 533, 839.

Debate — style and drafting report, Trans. 1185, 1196, 1197, 2922.

Delegate proposals, Vol. I 144, 191, 212, 221, 260, 289, 330, 332.

Final consideration, Trans. 1863, 1864.

Text as adopted, Vol. II 1091.

Section 4. Eligibility for public office. Any qualified elector is eligible to any public office except as otherwise provided in this constitution. The legislature may provide additional qualifications but no person convicted of a felony shall be eligible to hold office until his final discharge from state supervision.

Cross-References

Rights of convicted, Art. II, sec. 28, Mont. Const.

Qualified elector, Art. IV, sec. 2, Mont. Const.

Qualification for legislative offices, Art. V, sec. 4, Mont. Const.

Disqualification of legislator for holding another office, Art. V, sec. 9, Mont. Const.

Qualifications for Executive Branch offices, Art. VI, sec. 3, Mont. Const.

Qualification for judicial offices, Art. VII, sec. 9, Mont. Const.

General qualifications of persons seeking public office, 2-16-102.

Resignation of judge required prior to becoming candidate for another public office, 3-1-607, 3-1-608.

Qualifications for office of Justice of Supreme Court, 3-2-102.

Qualifications for office of District Court Judge, 3-5-202.

Qualifications for office of Municipal Court Judge, 3-6-202.

Qualifications for office of Justice of the Peace, 3-10-202.

Appointment to or candidacy of legislator for other office, 5-2-104.

General qualifications for county offices, 7-4-2201.

General qualifications for district or township offices, 7-4-2202.

Qualifications for County Attorney in certain counties, 7-4-2701.

Qualifications of County Surveyor, 7-4-2801.

General qualifications for municipal office, 7-4-4104.

Qualifications for office of Mayor, 7-4-4301.

Qualifications for office of Alderman, 7-4-4401.

Qualifications for office of City Attorney, 7-4-4601.

Qualifications for office of County Auditor, 7-6-2403.

Qualifications for Office of Superintendent of Public Instruction, 20-3-101.

Qualifications for office of County Superintendent of Schools, 20-3-201.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2934, 2935.

Committee report, Vol. I 336, 338, 340, 341; Vol. II 621, 635, 845 through 847, 1045.

Cross-references, 1889 and 1972 Constitutions, Vol. I 344.

Debate — committee report, Trans. 414 through 417, 422, 528 through 532, 534, 678, 885, 1745 through 1749.

Debate — style and drafting report, Trans. 1185, 1186, 1196, 1197, 2922.

Delegate proposals, Vol. I 97, 191, 192, 218.

Final consideration, Trans. 1864, 1865.

Text as adopted, Vol. II 1091.

Section 5. Result of elections. In all elections held by the people, the person or persons receiving the largest number of votes shall be declared elected.

Cross-References

Determination of winner, 13-1-103.

Canvassing, returns, and certificates, Title 13, ch. 15.

Recounts and tie votes, Title 13, ch. 16.

Determination of results of ballot issues, 13-27-503.

Exit polls prohibited, 13-35-211.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2934, 2935.

Committee report, Vol. I 336, 338, 339, 341; Vol. II 845 through 847, 1045.

Cross-references, 1889 and 1972 Constitutions, Vol. I 344.

Debate — committee report, Trans. 417 through 419, 422, 532.

Debate — style and drafting report, Trans. 1186, 1196, 1197, 2922.

Delegate proposal, Vol. I 192.

Final consideration, Trans. 1865 through 1867.

Text as adopted, Vol. II 1091.

Section 6. Privilege from arrest. A qualified elector is privileged from arrest at polling places and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace.

Cross-References

Privilege from arrest, 13-1-115.

Felony defined, 45-2-101.

Offenses against public order, Title 45, ch. 8.

Persons exempt from arrest, 46-6-102.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2934, 2935.

Committee report, Vol. I 339; Vol. II 845 through 847, 1045, 1091.

Debate — committee report, Trans. 418 through 422, 532, 533.

Debate — style and drafting report, Trans. 1186, 1187, 1196, 1197, 2922.

Final consideration, Trans. 1867, 1868.

Text as adopted, Vol. II 1091.

Section 7. Ballot issues — challenges — elections. (1) An initiative or referendum that qualifies for the ballot under Article III or Article XIV shall be submitted to the qualified electors as provided in the Article under which the initiative or referendum qualified unless a new election is held pursuant to this section.

(2) A preelection challenge to the procedure by which an initiative or referendum qualified for the ballot or a postelection challenge to the manner in which the election was conducted shall be given priority by the courts.

(3) If the election on an initiative or referendum properly qualifying for the ballot is declared invalid because the election was improperly conducted, the secretary of state shall submit the issue to the qualified electors at the next regularly scheduled statewide election unless the legislature orders a special election.

History: En. Const. Amend. No. 21, 1990.

Cross-References

Original jurisdiction — contest of ballot issue, 3-5-302.

Ballot issues — election procedure, Title 13, ch. 27, part 5.

Section 8. Limitation on terms of office. (1) The secretary of state or other authorized official shall not certify a candidate's nomination or election to, or print or cause to be printed on any ballot the name of a candidate for, one of the following offices if, at the end of the current term of that office, the candidate will have served in that office or had he not resigned or been recalled would have served in that office:

(a) 8 or more years in any 16-year period as governor, lieutenant governor, secretary of state, state auditor, attorney general, or superintendent of public instruction;

(b) 8 or more years in any 16-year period as a state representative;

(c) 8 or more years in any 16-year period as a state senator;

(d) 6 or more years in any 12-year period as a member of the U.S. house of representatives; and

(e) 12 or more years in any 24-year period as a member of the U.S. senate.

(2) When computing time served for purposes of subsection (1), the provisions of subsection (1) do not apply to time served in terms that end during or prior to January 1993.

(3) Nothing contained herein shall preclude an otherwise qualified candidate from being certified as nominated or elected by virtue of write-in votes cast for said candidate.

History: En. Sec. 1, Const. Initiative No. 64, approved Nov. 3, 1992.

Cross-References

Legislature — election and terms, Art. V, sec. 3, Mont. Const.

Executive Branch — officers — terms, Art. VI, sec. 1, Mont. Const.

Judiciary — terms and pay, Art. VII, sec. 7, Mont. Const.

ARTICLE V

THE LEGISLATURE

Section

1. Power and structure.
2. Size.
3. Election and terms.
4. Qualifications.
5. Compensation.
6. Sessions.
7. Vacancies.
8. Immunity.
9. Disqualification.
10. Organization and procedure.
11. Bills.
12. Local and special legislation.
13. Impeachment.
14. Districting and apportionment.

Article Cross-References

Popular sovereignty, Art. II, sec. 1, Mont. Const.

Self-government, Art. II, sec. 2, Mont. Const.

Right of participation, Art. II, sec. 8, Mont. Const.

Right to know, Art. II, sec. 9, Mont. Const.

Legislature — may establish drinking age, Art. II, sec. 14, Mont. Const.

Legislature — may provide for immunity from suit, Art. II, sec. 18, Mont. Const.

Legislature — not to pass ex post facto laws, laws impairing obligations of contracts, or irrevocable privileges, Art. II, sec. 31, Mont. Const.

Application of Legislature to import armed persons to preserve peace, Art. II, sec. 33, Mont. Const.

Legislature — special privileges to servicemen, servicewomen, or veterans, Art. II, sec. 35, Mont. Const.

Legislature as distinct branch of government, Art. III, sec. 1, Mont. Const.

Legislature may enact laws to ensure continuity of government, Art. III, sec. 2, Mont. Const.

Members of Legislature to take oath of office, Art. III, sec. 3, Mont. Const.

Legislative acts may be approved or rejected by referendum, Art. III, sec. 5, Mont. Const.

Special election for initiative or referendum, Art. III, sec. 6, Mont. Const.

Gambling prohibited unless authorized by Legislature or the people, Art. III, sec. 9, Mont. Const.

Legislature to provide election laws, Art. IV, sec. 3, Mont. Const.

Governor to give Legislature information, submit legislation, and submit budget, Art. VI, sec. 9, Mont. Const.

Veto power of Governor, Art. VI, sec. 10, Mont. Const.

Legislative determination as to ability of Governor to discharge duties of office, Art. VI, sec. 14, Mont. Const.

Power of Legislature to disapprove rules of Supreme Court, Art. VII, sec. 2, Mont. Const.

Legislature — may increase number of Justices on Supreme Court, Art. VII, sec. 3, Mont. Const.

Legislature — may provide for judicial review of administrative proceedings, Art. VII, sec. 4, Mont. Const.

Legislature — may provide for additional Justices of the Peace, Art. VII, sec. 5, Mont. Const.

Legislature to divide state into judicial districts, Art. VII, sec. 6, Mont. Const.

Senate confirmation of Supreme Court appointee, Art. VII, sec. 8, Mont. Const.

State debt prohibited except upon approval of Legislature, Art. VII, sec. 8, Mont. Const.

Appropriations by Legislature not to exceed anticipated revenue, Art. VII, sec. 9, Mont. Const.

Legislature to limit debts of local government entities, Art. VII, sec. 10, Mont. Const.

Legislature to create Judicial Standards Commission, Art. VII, sec. 11, Mont. Const.

Power of Legislature to exempt property from taxation, Art. VIII, sec. 5, Mont. Const.

Legislature to provide tax appeal procedure, Art. VIII, sec. 7, Mont. Const.

Legislature to ensure strict accountability of all revenue, Art. VIII, sec. 12, Mont. Const.

Legislature to provide unified investment program for public funds, Art. VIII, sec. 13, Mont. Const.

Legislature to provide for administration and enforcement of duty to maintain clean and healthful environment, Art. IX, sec. 1, Mont. Const.

Legislature to provide reclamation laws and resource indemnity trust fund, Art. IX, sec. 2, Mont. Const.

Legislature to provide for administration, control, and regulation of water rights, Art. IX, sec. 3, Mont. Const.

Legislature to protect cultural resources, Art. IX, sec. 4, Mont. Const.

Legislative dedication of coal tax proceeds, Art. IX, sec. 5, Mont. Const.

Legislature to provide public education, Art. X, sec. 1, Mont. Const.

Legislature prohibited from aiding sectarian schools, Art. X, sec. 6, Mont. Const.

Legislature to provide alternate forms of local government, Art. XI, sec. 3, Mont. Const.

Legislature to provide procedures permitting local government self-charters, Art. XI, sec. 5, Mont. Const.

Legislature to extend initiative and referendum powers to electors of local governments, Art. XI, sec. 8, Mont. Const.

Legislature to provide for procedures for local government review, Art. XI, sec. 9, Mont. Const.

Legislature to provide for Department of Agriculture, Art. XII, sec. 1, Mont. Const.

Legislature may change maximum hours of workday, Art. XII, sec. 2, Mont. Const.

Legislature to provide for Department of Labor and Industry, Art. XII, sec. 2, Mont. Const.

Senate confirmation of Commissioner of Labor and Industry, Art. XII, sec. 2, Mont. Const.

Legislature may provide economic assistance to those who need aid of society, Art. XII, sec. 3, Mont. Const.

Legislature prohibited from passing retrospective laws imposing new liability in respect to transactions or considerations already passed, Art. XIII, sec. 1, Mont. Const.

Legislature to provide protection and education for the people against harmful and unfair practices of corporations, individuals, or associations, Art. XIII, sec. 1, Mont. Const.

Legislature to provide for Consumer Counsel, Art. XIII, sec. 2, Mont. Const.

Legislature to provide code of ethics for legislators and all state and local officers and employees, Art. XIII, sec. 4, Mont. Const.

Legislature to enact liberal homestead laws, Art. XIII, sec. 5, Mont. Const.

Legislature may submit referendum on question of calling Constitutional Convention, Art. XIV, sec. 1, Mont. Const.

Legislature to call Constitutional Convention, Art. XIV, sec. 2, Mont. Const.

Legislature to fix time and place of Constitutional Convention and provide funding, Art. XIV, sec. 5, Mont. Const.

Legislature — may submit referendum on question of amendment to Constitution, Art. XIV, sec. 8, Mont. Const.

Meaning of law, Title 1, ch. 1, part 1.

Statutory construction, Title 1, ch. 2, part 1.

Effect of Legislature's actions, Title 1, ch. 2, part 2.

Commission on Uniform State Laws, Title 1, ch. 12.

Members of Legislature not to be interested in contracts made in their official capacity, 2-2-201.

Constitutional Convention Transcript Cross-References Relating to Unicameral Legislature

ARTICLE V — THE LEGISLATURE (UNICAMERAL)

Section 1. Power and structure.

Adoption, See ***ADOPTION SCHEDULE***.

Committee report, Vol. I 376, 381, 382; Vol. II 861, 867, 874, 1046.

Cross-references, 1889 and 1972 Constitutions, Vol. I 416.

Debate — committee report, Trans. 628, 747 through 760, 789, 853.

Debate — style and drafting report, Trans. 1568, 2922 through 2925.

Delegate proposal, Vol. I 109.

Final consideration, Trans. 1870 through 1872.

Text as adopted, Vol. II 1105.

Section 2. Size.

Adoption, See ***ADOPTION SCHEDULE***.

Committee report, Vol. I 376, 382; Vol. II 861, 867, 874, 1046.

Cross-references, 1889 and 1972 Constitutions, Vol. I 416.

Debate — committee report, Trans. 690, 760 through 770, 789, 824, 825.

Debate — style and drafting report, Trans. 1568, 1596 through 1600, 1611 through 1614, 2922 through 2925.

Delegate proposal, Vol. I 109.

Final consideration, Trans. 1872, 1873.

Text as adopted, Vol. II 1105.

Section 3. Election and terms.

Adoption, See ***ADOPTION SCHEDULE***.

Committee report, Vol. I 376, 383; Vol. II 861, 867, 874, 1046.

Cross-references, 1889 and 1972 Constitutions, Vol. I 416.

Debate — committee report, Trans. 770 through 775, 789.

Debate — style and drafting report, Trans. 1568, 1569, 2922 through 2925.

Delegate proposals, Vol. I 106, 110.

Final consideration, Trans. 1873, 1874.

Text as adopted, Vol. II 1105.

Section 4. Qualifications.

Adoption, See ***ADOPTION SCHEDULE***.

Committee report, Vol. I 376, 383; Vol. II 861, 867, 874, 1046.

Cross-references, 1889 and 1972 Constitutions, Vol. I 416.

Debate — committee report, Trans. 545 through 572, 797 through 808, 1696.

Debate — style and drafting report, Trans. 1569, 1570, 1857, 1858, 2922 through 2925.

Final consideration, Trans. 1874, 1875.

Text as adopted, Vol. II 1105.

Section 5. Compensation.

Adoption, See ***ADOPTION SCHEDULE***.

Committee report, Vol. I 376, 383, 384; Vol. II 861, 867, 874, 1046.

Cross-references, 1889 and 1972 Constitutions, Vol. I 416.

Debate — committee report, Trans. 572 through 579, 588, 589, 992, 993, 1084.

Debate — style and drafting report, Trans. 1570 through 1572, 2922 through 2925.

Delegate proposals, Vol. I 110, 280.

Final consideration, Trans. 1875 through 1878.

Text as adopted, Vol. II 1105.

Section 6. Sessions.

Adoption, See ***ADOPTION SCHEDULE***.

Committee report, Vol. I 376, 384, 385; Vol. II 861, 867, 868, 874, 1046.

Cross-references, 1889 and 1972 Constitutions, Vol. I 416.

Debate — committee report, Trans. 579 through 593, 796, 797, 813 through 829.

Debate — style and drafting report, Trans. 1572, 1573, 2922 through 2925.

Delegate proposal, Vol. I 110.

Final consideration, Trans. 1877, 1878.

Text as adopted, Vol. II 1105.

Section 7. Vacancies.

Adoption, See ***ADOPTION SCHEDULE***.

Committee report, Vol. I 376, 377, 385, 386; Vol. II 861, 862, 868, 1046.
Cross-references, 1889 and 1972 Constitutions, Vol. I 416.
Debate — committee report, Trans. 549, 550, 593, 594, 725 through 727.
Debate — style and drafting report, Trans. 1573, 2922 through 2925.
Final consideration, Trans. 1878, 1879.
Text as adopted, Vol. II 1105.
Section 8. Immunity.
Adoption, See ***ADOPTION SCHEDULE***.
Committee report, Vol. I 377, 386; Vol. II 862, 868, 874, 1046.
Cross-references, 1889 and 1972 Constitutions, Vol. I 416.
Debate — committee report, Trans. 594, 595.
Debate — style and drafting report, Trans. 1573, 1858, 2922 through 2925.
Delegate proposal, Vol. I 110.
Final consideration, Trans. 1879, 1880.
Text as adopted, Vol. II 1105.
Section 9. Disqualification.
Adoption, See ***ADOPTION SCHEDULE***.
Committee report, Vol. I 377, 386; Vol. II 862, 868, 874, 1046, 1047.
Cross-references, 1889 and 1972 Constitutions, Vol. I 416.
Debate — committee report, Trans. 595 through 599, 1617 through 1620.
Debate — style and drafting report, Trans. 1573 through 1582, 2922 through 2925.
Final consideration, Trans. 1880, 1881.
Text as adopted, Vol. II 1105.
Section 10. Organization and procedure.
Adoption, See ***ADOPTION SCHEDULE***.
Committee report, Vol. I 377, 386, 388; Vol. II 862, 868, 874, 1047.
Cross-references, 1889 and 1972 Constitutions, Vol. I 416.
Debate — committee report, Trans. 599 through 631, 635 through 637, 789, 2791 through 2806.
Debate — style and drafting report, Trans. 1582, 1583, 1858, 2922 through 2925.
Delegate proposals, Vol. I 110, 111, 250.
Final consideration, Trans. 1881 through 1883, 2809 through 2811.
Text as adopted, Vol. II 1105.
Section 11. Bills.
Adoption, See ***ADOPTION SCHEDULE***.
Committee report, Vol. I 377, 378, 388, 389; Vol. II 862, 863, 868, 869, 874, 1047, 1048.
Cross-references, 1889 and 1972 Constitutions, Vol. I 416.
Debate — committee report, Trans. 637 through 673, 1535, 2015.
Debate — style and drafting report, Trans. 1583 through 1587, 1623, 1624, 2922 through 2925.
Delegate proposal, Vol. I 111.
Final consideration, Trans. 1883, 1884.
Text as adopted, Vol. II 1105, 1106.
Section 12. Local and special legislation.
Adoption, See ***ADOPTION SCHEDULE***.
Committee report, Vol. I 378, 389, 390; Vol. II 863, 869, 874, 1048.
Cross-references, 1889 and 1972 Constitutions, Vol. I 416.
Debate — committee report, Trans. 674.
Debate — style and drafting report, Trans. 1587, 2922 through 2925.
Delegate proposal, Vol. I 111.
Final consideration, Trans. 1884, 1885.
Text as adopted, Vol. II 1106.
Section 13. Impeachment.
Adoption, See ***ADOPTION SCHEDULE***.
Committee report, Vol. I 378, 379, 391, 392; Vol. II 863, 869, 870, 874, 1048.
Cross-references, 1889 and 1972 Constitutions, Vol. I 416.
Debate — committee report, Trans. 675 through 680, 789.
Debate — style and drafting report, Trans. 1587 through 1590, 2922 through 2925.
Delegate proposal, Vol. I 112.
Final consideration, Trans. 1885, 1886.
Text as adopted, Vol. II 1106.
Section 14. Districting and apportionment.
Adoption, See ***ADOPTION SCHEDULE***.
Committee report, Vol. I 379, 381, 392, 393; Vol. II 863, 864, 870, 874, 875, 1048.
Cross-references, 1889 and 1972 Constitutions, Vol. I 416.
Debate — committee report, Trans. 680 through 696, 711 through 725, 789, 1568.
Debate — style and drafting report, Trans. 1590 through 1593, 1614, 1615, 1858, 2922 through 2925.
Delegate proposal, Vol. I 109, 110.
Final consideration, Trans. 1886, 1887.
Text as adopted, Vol. II 1106.
Section 15. Referendum of unicameral legislature.
Adoption, See ***ADOPTION SCHEDULE***.
Committee report, Vol. II 864 through 866, 870 through 873, 875, 1048 through 1051.
Debate — committee report, Trans. 785 through 789.
Debate — style and drafting report, Trans. 1593, 1594, 1627 through 1629, 1858, 1859, 2922 through 2925.
Final consideration, Trans. 1887, 1888, 2812 through 2814.
Text as adopted, Vol. II 1106 through 1108.

Section 1. Power and structure. The legislative power is vested in a legislature consisting of a senate and a house of representatives. The people reserve to themselves the powers of initiative and referendum.

Cross-References

Popular sovereignty, Art. II, sec. 1, Mont. Const.

Initiative, Art. III, sec. 4, Mont. Const.

Referendum, Art. III, sec. 5, Mont. Const.

Composition and organization of Legislature, Title 5, ch. 2.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 3010, 3011.

Committee report, Vol. I 395, 400; Vol. II 864, 871, 875, 876, 880, 885, 886, 1049, 1052, 1106.

Cross-references, 1889 and 1972 Constitutions, Vol. I 416.

Debate — committee report, Trans. 628, 775 through 779, 785, 789, 853.

Debate — style and drafting report, Trans. 1594, 1595, 2922 through 2925, 2996.

Delegate proposal, Vol. I 274.

Final consideration, Trans. 1891, 1892.

Text as adopted, Vol. II 1091.

Section 2. Size. The size of the legislature shall be provided by law, but the senate shall not have more than 50 or fewer than 40 members and the house shall not have more than 100 or fewer than 80 members.

Cross-References

Districting and apportionment, Art. V, sec. 14, Mont. Const.; Title 5, ch. 1.

Composition of Legislature, 5-2-101.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 3010, 3011.

Committee report, Vol. I 395, 400, 401, 411; Vol. II 864, 871, 875, 876, 880, 885, 886, 1049, 1052, 1106.

Cross-references, 1889 and 1972 Constitutions, Vol. I 416.

Debate — committee report, Trans. 744, 779 through 785, 789, 815, 819, 821 through 826.

Debate — style and drafting report, Trans. 1595 through 1610, 2922 through 2925, 2996.

Delegate proposals, Vol. I 274.

Final consideration, Trans. 1892, 1893.

Text as adopted, Vol. II 1091.

Section 3. Election and terms. A member of the house of representatives shall be elected for a term of two years and a member of the senate for a term of four years each to begin on a date provided by law. One-half of the senators shall be elected every two years.

Cross-References

Limitation on terms of office, Art. IV, sec. 8, Mont. Const.

Each house to judge election and qualifications of its members, Art. V, sec. 10, Mont. Const.

Term of office for Senators and Representatives, 5-2-102.

Elections, Title 13.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 3010, 3011.

Committee report, Vol. I 395, 401; Vol. II 864, 871, 875, 876, 880, 885, 886, 1049, 1052, 1107.

Cross-references, 1889 and 1972 Constitutions, Vol. I 416.

Debate — committee report, Trans. 785, 789, 1568, 1569.

Debate — style and drafting report, Trans. 1615, 2922 through 2925, 2996.

Delegate proposals, Vol. I 106, 274, 275.

Final consideration, Trans. 1893, 1894.

Text as adopted, Vol. II 1091.

Section 4. Qualifications. A candidate for the legislature shall be a resident of the state for at least one year next preceding the general election. For six months next preceding the general election, he shall be a resident of the county if it contains one or more districts or of the district if it contains all or parts of more than one county.

Cross-References

Eligibility for public office, Art. IV, sec. 4, Mont. Const.

Disqualification of legislators, Art. V, sec. 9, Mont. Const.

Rules for determining residence generally, 1-1-215.

Qualifications for public office generally, 2-16-102.

Residence for election purposes, 13-1-112 through 13-1-114.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 3010, 3011.

Committee report, Vol. I 395, 401, 412; Vol. II 876, 880, 886, 1052.

Cross-references, 1889 and 1972 Constitutions, Vol. I 416.

Debate — committee report, Trans. 545 through 572, 728, 797 through 808, 1569, 1570, 1696.

Debate — style and drafting report, Trans. 1615, 1616, 2922 through 2925, 2996.

Delegate proposals, Vol. I 274, 275.

Final consideration, Trans. 1894 through 1896.

Text as adopted, Vol. II 1091.

Section 5. Compensation. Each member of the legislature shall receive compensation for his services and allowances provided by law. No legislature may fix its own compensation.

Cross-References

Travel, meals, and lodging, Title 2, ch. 18, part 5.

State group insurance, Title 2, ch. 18, parts 7 and 8.

Compensation and expenses of legislators, Title 5, ch. 2, part 3.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 3010, 3011.

Committee report, Vol. I 395, 401, 402, 413; Vol. II 876, 880, 886, 1052.

Cross-references, 1889 and 1972 Constitutions, Vol. I 416.

Debate — committee report, Trans. 572 through 579, 588, 589, 728, 992, 993, 1084, 1572.

Debate — style and drafting report, Trans. 1616, 2922 through 2925, 2996.

Delegate proposals, Vol. I 275, 280.

Final consideration, Trans. 1896, 1897.

Text as adopted, Vol. II 1091.

Section 6. Sessions. The legislature shall meet each odd-numbered year in regular session of not more than 90 legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majority of the members.

Cross-References

Power of Governor to convene Legislature, Art. VI, sec. 11, Mont. Const.

Convening of Legislature to determine ability of Governor to perform duties of office, Art. VI, sec. 14, Mont. Const.

Convening of Legislature to fill vacancy in certain state offices, 2-16-504.

Convening of Legislature following enemy attack, 2-16-513.

Time and place of meeting, 5-2-103.

Call of special session, Title 5, ch. 3.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 3010, 3011.

Committee report, Vol. I 395, 402, 414, 415; Vol. II 876, 877, 880, 881, 886, 887, 1052.

Cross-references, 1889 and 1972 Constitutions, Vol. I 416.

Debate — committee report, Trans. 579 through 593, 728, 796, 797, 813 through 829.

Debate — style and drafting report, Trans. 1616, 1702 through 1704, 2922 through 2925, 2996.

Delegate proposals, Vol. I 106, 275, 280.

Final consideration, Trans. 1897, 1898.

Text as adopted, Vol. II 1091.

Section 7. Vacancies. A vacancy in the legislature shall be filled by special election for the unexpired term unless otherwise provided by law.

Cross-References

Vacancies in office of Senator or Representative, Title 5, ch. 2, part 4.

Vacancies prior to primary election, 13-10-326.

Vacancies after primary election and prior to general election, 13-10-327.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 3010, 3011.

Committee report, Vol. I 395, 396, 402; Vol. II 877, 881, 887, 1052.

Cross-references, 1889 and 1972 Constitutions, Vol. I 416.

Debate — committee report, Trans. 549, 550, 593, 594, 725 through 728.

Debate — style and drafting report, Trans. 1616, 2922 through 2925, 2996.

Delegate proposals, Vol. I 275, 278.

Final consideration, Trans. 1898, 1899.

Text as adopted, Vol. II 1091.

Section 8. Immunity. A member of the legislature is privileged from arrest during attendance at sessions of the legislature and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace. He shall not be questioned in any other place for any speech or debate in the legislature.

Cross-References

Immunity from suit for legislative acts and omissions, 2-9-111.

Felony defined, 45-2-101.

Offenses against public order, Title 45, ch. 8.

Senators and Representatives exempt from arrest under certain circumstances, 46-6-102.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 3010, 3011.

Committee report, Vol. I 396, 402; Vol. II 877, 881, 887, 1052.

Cross-references, 1889 and 1972 Constitutions, Vol. I 416.

Debate — committee report, Trans. 594, 595, 728, 1573.

Debate — style and drafting report, Trans. 1616, 1617, 2922 through 2925, 2996.

Delegate proposal, Vol. I 275.

Final consideration, Trans. 1899, 1900.

Text as adopted, Vol. II 1092.

Section 9. Disqualification. No member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or the militia) under the United States or this state, shall be a member of the legislature during his continuance in office.

Cross-References

Qualifications of legislator, Art. V, sec. 4, Mont. Const.

Appointment of legislator or candidacy of legislator for other offices, 5-2-104.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 3010, 3011.

Committee report, Vol. I 396, 402, 403; Vol. II 877, 881, 887, 1053.

Cross-references, 1889 and 1972 Constitutions, Vol. I 416.

Debate — committee report, Trans. 595 through 599, 728, 1573 through 1582, 1617 through 1620.

Debate — style and drafting report, Trans. 1617 through 1620, 1859, 1860, 2922 through 2925, 2996.

Delegate proposal, Vol. I 275.

Final consideration, Trans. 1900, 1901.

Text as adopted, Vol. II 1092.

Section 10. Organization and procedure. (1) Each house shall judge the election and qualifications of its members. It may by law vest in the courts the power to try and determine contested elections. Each house shall choose its officers from among its members, keep a journal, and make rules for its proceedings. Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members.

(2) A majority of each house constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

(3) The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public.

(4) The legislature may establish a legislative council and other interim committees. The legislature shall establish a legislative post-audit committee which shall supervise post-auditing duties provided by law.

(5) Neither house shall, without the consent of the other, adjourn or recess for more than three days or to any place other than that in which the two houses are sitting.

Cross-References

Right of participation, Art. II, sec. 8, Mont. Const.

Right to know, Art. II, sec. 9, Mont. Const.

Publication and updating of Montana Code Annotated, Title 1, ch. 11, part 3.

Organization of Legislature, Title 5, ch. 2.

Legislative procedures, Title 5, ch. 5.

Legislative Council, Title 5, ch. 11.

Legislative Finance Committee, Title 5, ch. 12, part 2.

Legislative Audit Committee, Title 5, ch. 13, part 2.

Administrative Code Committee, Title 5, ch. 14.

Legislative Consumer Committee, Title 5, ch. 15, part 1.

Environmental Quality Council, Title 5, ch. 16.

Revenue Oversight Committee, Title 5, ch. 18.

Quorum requirement suspended following enemy attack, 10-3-606.

Elections, Title 13.

Recounts and tie votes, Title 13, ch. 16.

Election and campaign practices — criminal provisions, Title 13, ch. 35.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 3010, 3011.

Committee report, Vol. I 396, 403, 404; Vol. II 864, 865, 871, 875, 877, 881, 882, 885, 887, 1049, 1053, 1107.

Cross-references, 1889 and 1972 Constitutions, Vol. I 416.

Debate — committee report, Trans. 599 through 631, 635 through 637, 728, 730 through 735, 785, 789, 2791 through 2806.

Debate — style and drafting report, Trans. 1620, 1621, 2922 through 2925, 2996.

Delegate proposals, Vol. I 250, 275, 276, 303.

Final consideration, Trans. 1901, 1902, 2809 through 2812, 2815.

Text as adopted, Vol. II 1092.

Section 11. Bills. (1) A law shall be passed by bill which shall not be so altered or amended on its passage through the legislature as to change its original purpose. No bill shall become law except by a vote of the majority of all members present and voting.

(2) Every vote of each member of the legislature on each substantive question in the legislature, in any committee, or in committee of the whole shall be recorded and made public. On final passage, the vote shall be taken by ayes and noes and the names entered on the journal.

(3) Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.

(4) A general appropriation bill shall contain only appropriations for the ordinary expenses of the legislative, executive, and judicial branches, for interest on the public debt, and for public schools. Every other appropriation shall be made by a separate bill, containing but one subject.

(5) No appropriation shall be made for religious, charitable, industrial, educational, or benevolent purposes to any private individual, private association, or private corporation not under control of the state.

(6) A law may be challenged on the ground of noncompliance with this section only within two years after its effective date.

Cross-References

Each house to keep journal, Art. V, sec. 10, Mont. Const.

Aid to sectarian schools prohibited, Art. X, sec. 6, Mont. Const.

Effective date of statutes, 1-2-201.

Effective date of joint resolutions, 1-2-202.

Secretary of State as custodian of actions and records of Legislature, 2-6-111.

Bills, Title 5, ch. 4.

Dissemination of laws and proceedings, Title 5, ch. 11, part 2.

Budgeting and appropriations, Title 17, ch. 7.

Conditions and limitations in appropriation acts, 17-8-103.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 3010, 3011.

Committee report, Vol. I 382, 396, 397, 404 through 406; Vol. II 877, 878, 882, 887, 888, 1053, 1054.

Cross-references, 1889 and 1972 Constitutions, Vol. I 416.

Debate — committee report, Trans. 637 through 673, 728, 1535, 2015.

Debate — style and drafting report, Trans. 1621 through 1625, 2922 through 2925, 2996.

Delegate proposals, Vol. I 137, 222, 276.

Final consideration, Trans. 1902, 1903.

Text as adopted, Vol. II 1092.

Section 12. Local and special legislation. The legislature shall not pass a special or local act when a general act is, or can be made, applicable.

Cross-References

Corporate charters granted, modified, or dissolved only pursuant to general law, Art. XIII, sec. 1, Mont. Const.

Public and private statutes, 1-1-106.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 3010, 3011.

Committee report, Vol. I 397, 406; Vol. II 878, 882, 888, 1054.

Cross-references, 1889 and 1972 Constitutions, Vol. I 416.

Debate — committee report, Trans. 674, 728.

Debate — style and drafting report, Trans. 1625, 2922 through 2925, 2996.

Delegate proposals, Vol. I 156, 276.

Final consideration, Trans. 1903, 1904.

Text as adopted, Vol. II 1092.

Section 13. Impeachment. (1) The governor, executive officers, heads of state departments, judicial officers, and such other officers as may be provided by law are subject to impeachment, and upon conviction shall be removed from office. Other proceedings for removal from public office for cause may be provided by law.

(2) The legislature shall provide for the manner, procedure, and causes for impeachment and may select the senate as tribunal.

(3) Impeachment shall be brought only by a two-thirds vote of the house. The tribunal hearing the charges shall convict only by a vote of two-thirds or more of its members.

(4) Conviction shall extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law.

Cross-References

Code of ethics for government officers and employees, Art. XIII, sec. 4, Mont. Const.

Standards of conduct for government officers and employees, Title 2, ch. 2.

Montana Recall Act, Title 2, ch. 16, part 6.

Court of Impeachment as court of record, 3-1-101, 3-1-102.

Impeachment, Title 5, ch. 5, part 4.

Election and campaign practices — criminal provisions, Title 13, ch. 35.

Impeachment of Commissioner of Political Practices, 13-37-105.

Crimes, Title 45.

Power to impeach unaffected by official misconduct section, 45-7-401.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 3010, 3011.

Committee report, Vol. I 397, 398, 406, 407; Vol. II 865, 871, 872, 875, 878, 883, 885, 888, 1050, 1054, 1107.

Cross-references, 1889 and 1972 Constitutions, Vol. I 416.

Debate — committee report, Trans. 675 through 680, 728, 735, 785, 789.

Debate — style and drafting report, Trans. 1625, 1626, 2922 through 2925, 2996.

Delegate proposals, Vol. I 276, 277.

Final consideration, Trans. 1904 through 1906.

Text as adopted, Vol. II 1092.

Section 14. Districting and apportionment. (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

(2) In the legislative session following ratification of this constitution and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative districts and a plan for redistricting the state into congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select him.

(3) Within 90 days after the official final decennial census figures are available, the commission shall file its final plan for congressional districts with the secretary of state and it shall become law.

(4) The commission shall submit its plan for legislative districts to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan for legislative districts with the secretary of state and it shall become law.

(5) Upon filing both plans, the commission is then dissolved.

Cross-References

Congressional, senatorial, and representative districts, Title 5, ch. 1.

Change of precinct boundaries, 13-3-102.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 3010, 3011.

Committee report, Vol. I 398, 399, 407, 408; Vol. II 865, 866, 872, 873, 875, 878, 879, 883 through 885, 888, 889, 1050, 1051, 1054, 1055, 1107.

Cross-references, 1889 and 1972 Constitutions, Vol. I 416.

Debate — committee report, Trans. 680 through 696, 711 through 725, 735 through 747, 785, 789.

Debate — style and drafting report, Trans. 1626, 1627, 1860, 2922 through 2925, 2996.

Delegate proposals, Vol. I 162, 163, 274, 278.

Final consideration, Trans. 1906, 1907.

Text as adopted, Vol. II 1092, 1093.

ARTICLE VI

THE EXECUTIVE

Section
1. Officers.
2. Election.
3. Qualifications.
4. Duties.
5. Compensation.
6. Vacancy in office.
7. 20 departments.
8. Appointing power.
9. Budget and messages.
10. Veto power.
11. Special session.
12. Pardons.
13. Militia.
14. Succession.
15. Information for governor.

Article Cross-References

Right of participation, Art. II, sec. 8, Mont. Const.

Right to know, Art. II, sec. 9, Mont. Const.

Executive as distinct branch of government, Art. III, sec. 1, Mont. Const.

Executive officers to take oath of office, Art. III, sec. 3, Mont. Const.

Impeachment of executive officers and heads of departments, Art. V, sec. 13, Mont. Const.

Executive officers as constituting Board of Land Commissioners, Art. X, sec. 4, Mont. Const.

Code of ethics for officers and employees, Art. XIII, sec. 4, Mont. Const.

Government structure and administration generally, Title 2.

Executive Branch officers and agencies, Title 2, ch. 15.

Public offices, Title 2, ch. 16.

Section 1. Officers. (1) The executive branch includes a governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor.

(2) Each holds office for a term of four years which begins on the first Monday of January next succeeding election, and until a successor is elected and qualified.

(3) Each shall reside at the seat of government, there keep the public records of his office, and perform such other duties as are provided in this constitution and by law.

Cross-References

Continuity of government, Art. III, sec. 2, Mont. Const.

Limitation on terms of office, Art. IV, sec. 8, Mont. Const.

Duties, Art. VI, sec. 4, Mont. Const.

Immunity from suit for certain gubernatorial actions, 2-9-113.

State officers to be bonded, Title 2, ch. 9, part 6.

Governor, Title 2, ch. 15, part 2.

Lieutenant Governor, Title 2, ch. 15, part 3.

Secretary of State, Title 2, ch. 15, part 4.

Attorney General, Title 2, ch. 15, part 5.

State Auditor, Title 2, ch. 15, part 6.

Superintendent of Public Instruction, Title 2, ch. 15, part 7; Title 20, ch. 3, part 1.

Director of Department of Administration as ex officio State Treasurer, 2-15-1002.

Residence of officers, 2-16-111.

Montana Recall Act, Title 2, ch. 16, part 6.

Elected officers may discriminate on basis of political belief in hiring immediate staff and department heads, 49-2-308.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2935, 2936.

Committee report, Vol. I 432, 435, 441 through 444, 457, 462, 463; Vol. II 893, 898, 904, 906, 1056.

Cross-references, 1889 and 1972 Constitutions, Vol. I 467.

Debate — committee report, Trans. 843 through 878, 994, 1008, 1695.

Debate — style and drafting report, Trans. 1692, 1693, 1707 through 1718, 2925, 2926.

Delegate proposals, Vol. I 180, 181, 228, 319.

Final consideration, Trans. 1922 through 1931.

Text as adopted, Vol. II 1093.

Section 2. Election. (1) The governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor shall be elected by the qualified electors at a general election provided by law.

(2) Each candidate for governor shall file jointly with a candidate for lieutenant governor in primary elections, or so otherwise comply with nomination procedures provided by law that the offices of governor and lieutenant governor are voted upon together in primary and general elections.

Cross-References

Limitation on terms of office, Art. IV, sec. 8, Mont. Const.

Term of office, Art. VI, sec. 1, Mont. Const.

Elections, Title 13.

Joint declaration of nomination for offices of Governor and Lieutenant Governor, 13-10-201.

Vacancy in Governor or Lieutenant Governor candidacy, 13-10-328.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2935, 2936.

Committee report, Vol. I 432, 435, 444, 445, 457, 463, 464; Vol. II 893, 898, 904, 906, 1056.

Cross-references, 1889 and 1972 Constitutions, Vol. I 467.

Debate — committee report, Trans. 878 through 882.

Debate — style and drafting report, Trans. 1693, 1708 through 1718, 2925, 2926.

Delegate proposals, Vol. I 180, 181, 228, 229, 319.

Final consideration, Trans. 1923, 1931, 1932.

Text as adopted, Vol. II 1093.

Section 3. Qualifications. (1) No person shall be eligible to the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, or auditor unless he is 25 years of age or older at the time of his election. In addition, each shall be a citizen of the United States who has resided within the state two years next preceding his election.

(2) Any person with the foregoing qualifications is eligible to the office of attorney general if an attorney in good standing admitted to practice law in Montana who has engaged in the active practice thereof for at least five years before election.

(3) The superintendent of public instruction shall have such educational qualifications as are provided by law.

Cross-References

Eligibility for public office generally, Art. IV, sec. 4, Mont. Const.

Supreme Court jurisdiction — admission to and conduct of bar, Art. VII, sec. 2, Mont. Const.; Title 37, ch. 61, part 1.

Rules for determining residence generally, 1-1-215.

Qualifications for public office generally, 2-16-102.

Residence for election purposes, 13-1-112 through 13-1-114.

Qualifications for Superintendent of Public Instruction, 20-3-101.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2935, 2936.

Committee report, Vol. I 435, 436, 445, 457, 458, 464; Vol. II 893, 898, 899, 904, 906, 1056.

Cross-references, 1889 and 1972 Constitutions, Vol. I 467.

Debate — committee report, Trans. 883 through 899, 978 through 987.

Debate — style and drafting report, Trans. 1693 through 1698, 1708 through 1714, 2925, 2926.

Delegate proposals, Vol. I 180, 228, 319, 320.

Final consideration, Trans. 1932, 1933, 1945, 1946.

Text as adopted, Vol. II 1093.

Section 4. Duties. (1) The executive power is vested in the governor who shall see that the laws are faithfully executed. He shall have such other duties as are provided in this constitution and by law.

(2) The lieutenant governor shall perform the duties provided by law and those delegated to him by the governor. No power specifically vested in the governor by this constitution may be delegated to the lieutenant governor.

(3) The secretary of state shall maintain official records of the executive branch and of the acts of the legislature, as provided by law. He shall keep the great seal of the state of Montana and perform any other duties provided by law.

(4) The attorney general is the legal officer of the state and shall have the duties and powers provided by law.

(5) The superintendent of public instruction and the auditor shall have such duties as are provided by law.

Cross-References

Application of Governor for military intervention, Art. II, sec. 33, Mont. Const.

Governor to fill vacancies in certain elected offices, Art. VI, sec. 6, Mont. Const.

Governor to appoint department heads and other officers, Art. VI, sec. 8, Mont. Const.

Governor to submit budget and legislation to Legislature, Art. VI, sec. 9, Mont. Const.

Governor — may convene Legislature, Art. VI, sec. 11, Mont. Const.

Governor — may grant reprieves and pardons, Art. VI, sec. 12, Mont. Const.

Governor as head of militia, Art. VI, sec. 13, Mont. Const.

Governor may require information — Executive Branch officers, Art. VI, sec. 15, Mont. Const.

Governor to nominate replacement for vacancy on Supreme Court or District Court, Art. VII, sec. 8, Mont. Const.

Elected officers — constitute Board of Land Commissioners, Art. X, sec. 4, Mont. Const.

Governor ex officio member of State Board of Education, Art. X, sec. 9, Mont. Const.

Governor to appoint Commissioner of Labor and Industry, Art. XII, sec. 2, Mont. Const.

Policymaking and administrative powers of Governor, 2-15-103.

Powers and duties of Governor, 2-15-201.

Powers and duties of Lieutenant Governor, 2-15-302.

Duties of Secretary of State, 2-15-401.

Duties of Attorney General, 2-15-501.

State Auditor, Title 2, ch. 15, part 6.

Governor — general authority in disasters and emergencies, 10-3-104.

Duties of Superintendent of Public Instruction, Title 20, ch. 3, part 1.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2935, 2936.

Committee report, Vol. I 435, 436, 441 through 447, 458, 465; Vol. II 893, 894, 899, 904, 907, 1056, 1057.

Cross-references, 1889 and 1972 Constitutions, Vol. I 467.

Debate — committee report, Trans. 867, 899 through 907, 911 through 927, 995 through 1007.

Debate — style and drafting report, Trans. 1698, 1699, 1708 through 1714, 2925, 2926.

Delegate proposals, Vol. I 181, 229, 320.

Final consideration, Trans. 1933, 1934, 2807, 2809.

Text as adopted, Vol. II 1093.

Section 5. Compensation. (1) Officers of the executive branch shall receive salaries provided by law.

(2) During his term, no elected officer of the executive branch may hold another public office or receive compensation for services from any other governmental agency. He may be a candidate for any public office during his term.

Cross-References

Salaries, Title 2, ch. 16, part 4.

Travel, meals, and lodging expenses of elected officials, Title 2, ch. 18, part 5.

Group insurance for state officers, Title 2, ch. 18, parts 7 and 8.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2935, 2936.

Committee report, Vol. I 432, 435, 436, 441, 447, 458; Vol. II 894, 899, 904, 907, 1057.

Cross-references, 1889 and 1972 Constitutions, Vol. I 467.

Debate — committee report, Trans. 927 through 929, 991 through 994.

Debate — style and drafting report, Trans. 1699, 2925, 2926.

Delegate proposals, Vol. I 181, 229, 320.

Final consideration, Trans. 1934, 1935.

Text as adopted, Vol. II 1094.

Section 6. Vacancy in office. (1) If the office of lieutenant governor becomes vacant by his succession to the office of governor, or by his death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office for the remainder of the term. If both the elected governor and the elected lieutenant governor become unable to serve in the office of governor, succession to the respective offices shall be as provided by law for the period until the next general election. Then, a governor and lieutenant governor shall be elected to fill the remainder of the original term.

(2) If the office of secretary of state, attorney general, auditor, or superintendent of public instruction becomes vacant by death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office until the next general election and until a successor is elected and qualified. The person elected to fill a vacancy shall hold the office until the expiration of the term for which his predecessor was elected.

Cross-References

Succession, Art. VI, sec. 14, Mont. Const.

Powers and duties of Governor, 2-15-201.

Vacancy and succession, Title 2, ch. 16, part 5.

Vacancy prior to primary election, 13-10-326.

Vacancy after primary and prior to general election, 13-10-327.

Vacancy in candidacy of Governor or Lieutenant Governor, 13-10-328.

Vacancy in Office of Superintendent of Public Instruction, 20-3-102.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2935, 2936.

Committee report, Vol. I 436, 447, 448, 458, 465, 466; Vol. II 894, 899, 900, 904, 907, 1057.

Cross-references, 1889 and 1972 Constitutions, Vol. I 467.

Debate — committee report, Trans. 929 through 933, 939 through 944.

Debate — style and drafting report, Trans. 1700, 1708 through 1714, 2925, 2926.

Delegate proposals, Vol. I 181, 182, 233, 322, 323.

Final consideration, Trans. 1935, 1936.

Text as adopted, Vol. II 1094.

Section 7. 20 departments. All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive branch (except for the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor) and their respective functions, powers, and duties, shall be allocated by law among not more than 20 principal departments so as to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a department.

Cross-References

Right of participation, Art. II, sec. 8, Mont. Const.

Right to know, Art. II, sec. 9, Mont. Const.

Appointing power, Art. VI, sec. 8, Mont. Const.

Legislature to provide for Department of Agriculture, Art. XII, sec. 1, Mont. Const.

Legislature to provide for Department of Labor and Industry, Art. XII, sec. 2, Mont. Const.

Public participation in governmental operations, Title 2, ch. 3.

Montana Administrative Procedure Act, Title 2, ch. 4.

Biennial reports of state agencies, 2-7-103.

Legislative review of need for and performance of agencies, Title 2, ch. 8, part 1.

Executive Branch officers and agencies, Title 2, ch. 15.

Termination of state agencies, Title 2, ch. 19, part 1.

Governor may discriminate on basis of political belief in naming department heads, 49-2-308.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2935, 2936.

Committee report, Vol. I 436, 437, 448, 449, 458, 459; Vol. II 894, 895, 900, 904, 907, 908, 1057.

Cross-references, 1889 and 1972 Constitutions, Vol. I 467.

Debate — committee report, Trans. 933 through 939, 1364.

Debate — style and drafting report, Trans. 1700, 1708 through 1714, 2925, 2926.

Delegate proposals, Vol. I 182, 183, 229 through 231, 321.

Final consideration, Trans. 1936, 1937.

Text as adopted, Vol. II 1094.

Section 8. Appointing power. (1) The departments provided for in section 7 shall be under the supervision of the governor. Except as otherwise provided in this constitution or by law, each department shall be headed by a single executive appointed by the governor subject to confirmation by the senate to hold office until the end of the governor's term unless sooner removed by the governor.

(2) The governor shall appoint, subject to confirmation by the senate, all officers provided for in this constitution or by law whose appointment or election is not otherwise provided for. They shall hold office until the end of the governor's term unless sooner removed by the governor.

(3) If a vacancy occurs in any such office when the legislature is not in session, the governor shall appoint a qualified person to discharge the duties thereof until the office is filled by appointment and confirmation.

(4) A person not confirmed by the senate for an office shall not, except at its request, be nominated again for that office at the same session, or be appointed to that office when the legislature is not in session.

Cross-References

State Board of Education, Art. X, sec. 9, Mont. Const.

Commissioner as head of Department of Labor and Industry, Art. XII, sec. 2, Mont. Const.

Appointment and qualification of department heads, 2-15-111.

Duties and powers of department heads, 2-15-112.

Right of department head to records and access, 2-15-113.

Powers and duties of Governor, 2-15-201.

Procedure for confirmation of appointees by Senate, Title 5, ch. 5, part 3.

Governor may discriminate on political basis in appointment of department heads and immediate staff, 49-2-308.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2935, 2936.

Committee report, Vol. I 437, 449, 450, 459; Vol. II 895, 900, 901, 904, 908, 1057, 1058, 1080, 1107.

Cross-references, 1889 and 1972 Constitutions, Vol. I 467.

Debate — committee report, Trans. 944 through 947.

Debate — style and drafting report, Trans. 1700, 1701, 2925, 2926.

Delegate proposals, Vol. I 183, 230, 231, 321.

Final consideration, Trans. 1938, 1939.

Text as adopted, Vol. II 1094.

Section 9. Budget and messages. The governor shall at the beginning of each legislative session, and may at other times, give the legislature information and recommend measures he considers necessary. The governor shall submit to the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail for all operating funds the proposed expenditures and estimated revenue of the state.

Cross-References

Revenue and finance, Art. VIII, Mont. Const.

Judicial budget, 3-1-702.

Submission of budget amendments to Legislative Finance Committee, 5-12-401.

Budgeting and appropriations, Title 17, ch. 7.

Limits on expenditures, 17-8-103.

Penalty for violation of expenditure limits, 17-8-104.

Cost for employer's contribution to Social Security to be included in agency budget, 19-1-703.

Cost for employer's contribution to retirement system to be included in agency budget, 19-3-317.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2935, 2936.

Committee report, Vol. I 432, 433, 437, 450, 459; Vol. II 895, 901, 908, 1058.

Cross-references, 1889 and 1972 Constitutions, Vol. I 467.

Debate — committee report, Trans. 842, 947, 948.

Debate — style and drafting report, Trans. 1701, 2925, 2926.

Delegate proposals, Vol. I 183, 231, 321.

Final consideration, Trans. 1939, 1940.

Text as adopted, Vol. II 1094.

Section 10. Veto power. (1) Each bill passed by the legislature, except bills proposing amendments to the Montana constitution, bills ratifying proposed amendments to the United States constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor for his signature. If he does not sign or veto the bill within 10 days after its delivery to him, it shall become law. The governor shall return a vetoed bill to the legislature with a statement of his reasons therefor.

(2) The governor may return any bill to the legislature with his recommendation for amendment. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill for amendment a second time.

(3) If after receipt of a veto message, two-thirds of the members of each house present approve the bill, it shall become law.

(4) (a) If the legislature is not in session when the governor vetoes a bill approved by two-thirds of the members present, he shall return the bill with his reasons therefor to the secretary of state. The secretary of state shall poll the members of the legislature by mail and shall send each member a copy of the governor's veto message. If two-thirds or more of the members of each house vote to override the veto, the bill shall become law.

(b) The legislature may reconvene as provided by law to reconsider any bill vetoed by the governor when the legislature is not in session.

(5) The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill.

Cross-References

Initiative, Art. III, sec. 4, Mont. Const.

Referendum, Art. III, sec. 5, Mont. Const.

Bills, Art. V, sec. 11, Mont. Const.

Constitutional amendment by referendum, Art. XIV, sec. 8, Mont. Const.

Constitutional amendment by initiative, Art. XIV, sec. 9, Mont. Const.

Effective date of statutes, 1-2-201.

Immunity from suit for gubernatorial actions on bills, 2-9-113.

Action by Governor on bills, Title 5, ch. 4, part 3.

Governor's veto — return when Legislature not in session, 5-4-306.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2935, 2936.

Committee report, Vol. I 355, 363, 378, 390, 391, 397, 406, 433, 437, 438, 446, 450 through 452, 459, 460; Vol. II 816, 821, 895, 896, 901, 904, 908, 909, 1058, 1059.

Cross-references, 1889 and 1972 Constitutions, Vol. I 467.

Debate — committee report, Trans. 522, 674, 675, 728, 747, 842, 948 through 958, 2719, 2720.

Debate — style and drafting report, Trans. 1701, 1702, 1720 through 1723, 2925, 2926.

Delegate proposals, Vol. I 111, 112, 116, 117, 120, 183, 184, 211, 231, 232, 258, 277, 321 through 323.

Final consideration, Trans. 1940, 1941.

Text as adopted, Vol. II 1094, 1095.

Section 11. Special session. Whenever the governor considers it in the public interest, he may convene the legislature.

Cross-References

Legislative sessions, Art. V, sec. 6, Mont. Const.

Convening of Legislature by Acting Governor following enemy attack, 2-16-513.

Meeting at request of Governor, 5-2-103.

Special sessions, Title 5, ch. 3, part 1.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2935, 2936.

Committee report, Vol. I 376, 384, 385, 395, 402, 414, 415, 438, 452, 460; Vol. II 861, 868, 874, 876, 877, 881, 887, 901, 902, 904, 909, 1046, 1052, 1059, 1091, 1105.

Cross-references, 1889 and 1972 Constitutions, Vol. I 467.

Debate — committee report, Trans. 579 through 593, 728, 817, 826, 956, 958 through 961.

Debate — style and drafting report, Trans. 1702 through 1704, 1723, 2925, 2926.

Delegate proposals, Vol. I 106, 110, 183, 231, 275, 321.

Final consideration, Trans. 1941, 1942.

Text as adopted, Vol. II 1095.

Section 12. Pardons. The governor may grant reprieves, commutations and pardons, restore citizenship, and suspend and remit fines and forfeitures subject to procedures provided by law.

Cross-References

Secretary of State to keep register of applications for pardons or commutations, 2-15-401.

Executive clemency defined, 46-23-103.

Executive clemency, Title 46, ch. 23, part 3.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2935, 2936.

Committee report, Vol. I 438, 452, 453, 460, 466; Vol. II 896, 902, 904, 905, 909, 1059.

Cross-references, 1889 and 1972 Constitutions, Vol. I 467.

Debate — committee report, Trans. 962 through 964.

Debate — style and drafting report, Trans. 1704, 1705, 2925, 2926.

Delegate proposals, Vol. I 183, 231, 321.

Final consideration, Trans. 1942, 1943.

Text as adopted, Vol. II 1095.

Section 13. Militia. (1) The governor is commander-in-chief of the militia forces of the state, except when they are in the actual service of the United States. He may call out any part or all of the forces to aid in the execution of the laws, suppress insurrection, repel invasion, or protect life and property in natural disasters.

(2) The militia forces shall consist of all able-bodied citizens of the state except those exempted by law.

Cross-References

Right to bear arms, Art. II, sec. 12, Mont. Const.

Civilian control of military, Art. II, sec. 32, Mont. Const.

Importation of armed persons, Art. II, sec. 33, Mont. Const.

Servicemen, servicewomen, and veterans may be given special considerations, Art. II, sec. 35, Mont. Const.

Militia, Title 10, ch. 1.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2935, 2936.

Committee report, Vol. I 438, 453, 454, 460; Vol. II 896, 902, 905, 909, 1059.

Cross-references, 1889 and 1972 Constitutions, Vol. I 467.

Debate — committee report, Trans. 964 through 966.

Debate — style and drafting report, Trans. 1705, 2925, 2926.

Delegate proposals, Vol. I 182, 229, 295, 296, 320.

Final consideration, Trans. 1943, 1944.

Text as adopted, Vol. II 1095.

Section 14. Succession. (1) If the governor-elect is disqualified or dies, the lieutenant governor-elect upon qualifying for the office shall become governor for the full term. If the governor-elect fails to assume office for any other reason, the lieutenant governor-elect upon qualifying as such shall serve as acting governor until the governor-elect is able to assume office, or until the office becomes vacant.

(2) The lieutenant governor shall serve as acting governor when so requested in writing by the governor. After the governor has been absent from the state for more than 45 consecutive days, the lieutenant governor shall serve as acting governor.

(3) He shall serve as acting governor when the governor is so disabled as to be unable to communicate to the lieutenant governor the fact of his inability to perform the duties of his office. The lieutenant governor shall continue to serve as acting governor until the governor is able to resume the duties of his office.

(4) Whenever, at any other time, the lieutenant governor and attorney general transmit to the legislature their written declaration that the governor is unable to discharge the powers and duties of his office, the legislature shall convene to determine whether he is able to do so.

(5) If the legislature, within 21 days after convening, determines by two-thirds vote of its members that the governor is unable to discharge the powers and duties of his office, the lieutenant governor shall serve as acting governor. Thereafter, when the governor transmits to the legislature his written declaration that no inability exists, he shall resume the powers and duties of his office within 15 days, unless the legislature determines otherwise by two-thirds vote of its members. If the legislature so determines, the lieutenant governor shall continue to serve as acting governor.

(6) If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term, except as provided in this constitution.

(7) Additional succession to fill vacancies shall be provided by law.

(8) When there is a vacancy in the office of governor, the successor shall be the governor. The acting governor shall have the powers and duties of the office of governor only for the period during which he serves.

Cross-References

Vacancy in other state elected offices, Art. VI, sec. 6, Mont. Const.

Powers and duties of Governor, 2-15-201.

Vacancy and succession, Title 2, ch. 16, part 5.

Vacancy following enemy attack, 10-3-602.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2935, 2936.

Committee report, Vol. I 438, 439, 454 through 456, 460, 461; Vol. II 896, 897, 902, 903, 905, 909, 910, 1059, 1060.

Cross-references, 1889 and 1972 Constitutions, Vol. I 467.

Debate — committee report, Trans. 880, 887, 930, 931, 940 through 944, 966 through 973.

Debate — style and drafting report, Trans. 1705 through 1708, 1718 through 1723, 2925, 2926.

Delegate proposals, Vol. I 181, 182, 232, 233, 278, 322, 323.

Final consideration, Trans. 1944, 1945.

Text as adopted, Vol. II 1095.

Section 15. Information for governor. (1) The governor may require information in writing, under oath when required, from the officers of the executive branch upon any subject relating to the duties of their respective offices.

(2) He may require information in writing, under oath, from all officers and managers of state institutions.

(3) He may appoint a committee to investigate and report to him upon the condition of any executive office or state institution.

Cross-References

Policymaking authority and administrative powers of Governor, 2-15-103.

Powers and duties of Governor, 2-15-201.

Responsibility of warden and superintendents of institutions, 53-1-204.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2935, 2936.

Committee report, Vol. II 897, 903, 905, 910, 1060.

Debate — committee report, Trans. 973, 974.

Debate — style and drafting report, Trans. 1707, 2925, 2926.

Delegate proposals, Vol. I 229.

Final consideration, Trans. 1945 through 1947.

Text as adopted, Vol. II 1095.

ARTICLE VII

THE JUDICIARY

Section

1. Judicial power.
2. Supreme court jurisdiction.
3. Supreme court organization.
4. District court jurisdiction.
5. Justices of the peace.
6. Judicial districts.
7. Terms and pay.
8. Selection.
9. Qualifications.
10. Forfeiture of judicial position.
11. Removal and discipline.

Article Cross-References

Administration of justice, Art. II, sec. 16, Mont. Const.

Initiation of criminal proceedings, Art. II, sec. 20, Mont. Const.

Bail, Art. II, sec. 21, Mont. Const.

Detention, Art. II, sec. 23, Mont. Const.

Rights of accused, Art. II, sec. 24, Mont. Const.

Protection against self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

Trial by jury, Art. II, sec. 26, Mont. Const.

Imprisonment for debt, Art. II, sec. 27, Mont. Const.

Rights of convicted, Art. II, sec. 28, Mont. Const.

Determination of just compensation in eminent domain proceedings, Art. II, sec. 29, Mont. Const.

The judiciary as separate branch of government, Art. III, sec. 1, Mont. Const.

Judicial officers to take oath, Art. III, sec. 3, Mont. Const.

Power of courts to determine contested legislative elections, Art. V, sec. 10, Mont. Const.

Senate as impeachment tribunal, Art. V, sec. 13, Mont. Const.

Supreme Court to select fifth member of Commission to Redistrict and Reapportion under certain circumstances, Art. V, sec. 14, Mont. Const.

Legislature to provide independent procedure for tax appeals, Art. VIII, sec. 7, Mont. Const.

Judicial officers and judicial record defined, 1-1-202.

Immunity from suit for judicial acts and omissions, 2-9-112.

Public officers, Title 2, ch. 16.

Montana Recall Act, Title 2, ch. 16, part 6.

The judiciary and courts generally, Title 3.

Judicial officers subject to impeachment, 5-5-401.

Military courts, Title 10, ch. 1, part 4.

Civil Procedure, Title 25.

Evidence, Title 26.

Remedies, Title 27.

Workers' Compensation Judge, Title 39, ch. 71, part 29.

Montana Youth Court Act, Title 41, ch. 5.

Crimes, Title 45.

Criminal Procedure, Title 46.

Interpreters for deaf persons in official proceedings, Title 49, ch. 4, part 5.

Section 1. Judicial power. The judicial power of the state is vested in one supreme court, district courts, justice courts, and such other courts as may be provided by law.

Cross-References

Senate as impeachment tribunal, Art. V, sec. 13, Mont. Const.

Supreme Court jurisdiction, Art. VII, sec. 2, Mont. Const.

Supreme Court organization, Art. VII, sec. 3, Mont. Const.

District Court jurisdiction, Art. VII, sec. 4, Mont. Const.

Justices of the Peace, Art. VII, sec. 5, Mont. Const.

Judicial districts, Art. VII, sec. 6, Mont. Const.

Role of judge in statutory construction, 1-2-101.

Role of judge in construing instruments, 1-4-101.

Courts and judges may administer oaths, 1-6-101.

Workers' Compensation Court, 2-15-1707; Title 39, ch. 71, part 29.

Supreme Court, Title 3, ch. 2.

District Courts, Title 3, ch. 5.

Municipal Courts, Title 3, ch. 6.

Water Courts, Title 3, ch. 7.

Justices' Courts, Title 3, ch. 10.

City Courts, Title 3, ch. 11.

Small Claims Court, Title 3, ch. 12.

Military courts, Title 10, ch. 1, part 4.

Conciliation Court, 40-3-111.

Youth Court, Title 41, ch. 5, part 2.

Judges, attorneys, and court officers privileged from arrest while attending court and while going to and returning from court, 46-6-102.

Adjudication of water rights, Title 85, ch. 2, part 2.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2936, 2937.

Committee report, Vol. I 486, 489, 493, 510, 514, 515; Vol. II 913, 917, 922, 924, 1061.

Cross-references, 1889 and 1972 Constitutions, Vol. I 528 through 530.

Debate — committee report, Trans. 1019, 1035, 1036, 1074.

Debate — style and drafting report, Trans. 2176, 2177, 2926.

Delegate proposals, Vol. I 84, 140, 205, 206.

Final consideration, Trans. 2434, 2435.

Text as adopted, Vol. II 1096.

Section 2. Supreme court jurisdiction. (1) The supreme court has appellate jurisdiction and may issue, hear, and determine writs appropriate thereto. It has original jurisdiction to issue, hear, and determine writs of habeas corpus and such other writs as may be provided by law.

(2) It has general supervisory control over all other courts.

(3) It may make rules governing appellate procedure, practice and procedure for all other courts, admission to the bar and the conduct of its members. Rules of procedure shall be subject to disapproval by the legislature in either of the two sessions following promulgation.

(4) Supreme court process shall extend to all parts of the state.

Cross-References

Supreme Court to appoint fifth member of Commission to Redistrict and Reapportion under certain circumstances, Art. V, sec. 14, Mont. Const.

Judicial officer defined, 1-1-202.

Rules of Supreme Court to be published in Montana Code Annotated, 1-11-204.

Appeal of District Court judgment reviewing administrative decision, 2-4-711.

Supreme Court jurisdiction, Title 3, ch. 2, part 2.

Adoption of Montana Rules of Civil Procedure, Title 3, ch. 2, part 7.

Chief Justice to preside at impeachment of Governor or Lieutenant Governor, 5-5-404.

Supreme Court Justices to receive copies of session laws, 5-11-203.

Inquiry of Supreme Court into emergency declaration of Governor, 10-3-506.

Appeal of conviction under Montana Alcoholic Beverage Code, 16-6-202.

Justices as board of trustees of law library, 22-1-502.

Montana Rules of Civil Procedure, Title 25, ch. 20.

Montana Rules of Appellate Procedure, Title 25, ch. 21.

Montana Justice and City Court Rules of Civil Procedure, Title 25, ch. 23.

Montana Rules of Evidence, Title 26, ch. 10.

Chief Justice to approve director of Medical Legal Panel, 27-6-201.

Injunctions, Title 27, ch. 19.

Writ of certiorari, Title 27, ch. 25.

Writ of mandate, Title 27, ch. 26.

Writ of prohibition, Title 27, ch. 27.

Quo warranto, Title 27, ch. 28.

Attorneys, Title 37, ch. 61.

Direct appeal of decisions of Workers' Compensation Judge, 39-71-2904.

Solemnization of marriage by court of record, 40-1-301.

Effect of appeal on dissolution decree, 40-4-108.

Rules relating to accuracy of criminal justice information — consent of Supreme Court, 44-5-213.

Criminal appeals, Title 46, ch. 20.

Appeal of zoning decision of Board of Adjustment to court of record, 76-2-327, 76-2-328.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2936, 2937.

Committee report, Vol. I 486, 493, 494, 510, 515, 516, 518; Vol. II 913, 917, 922, 924, 1061.

Cross-references, 1889 and 1972 Constitutions, Vol. I 528 through 530.

Debate — committee report, Trans. 1036 through 1044, 1071 through 1073, 1162, 1163.

Debate — style and drafting report, Trans. 2177 through 2179, 2926.

Delegate proposals, Vol. I 84, 85, 112, 140, 205, 304.

Final consideration, Trans. 2435, 2436.

Text as adopted, Vol. II 1096.

Section 3. Supreme court organization. (1) The supreme court consists of one chief justice and four justices, but the legislature may increase the number of justices from four to six. A majority shall join in and pronounce decisions, which must be in writing.

(2) A district judge shall be substituted for the chief justice or a justice in the event of disqualification or disability, and the opinion of the district judge sitting with the supreme court shall have the same effect as an opinion of a justice.

Cross-References

Salaries, 2-16-403.

Restrictions on judicial officers, Title 3, ch. 1, part 6.

Supreme Court rules on disqualification and substitution of judges, 3-1-803, 3-1-804.

Number of associate justices, 3-2-101.

Concurrence of majority required, 3-2-211.

Powers of individual justices, 3-2-212.

Form and reporting of decisions, Title 3, ch. 2, part 6.

Expenses of District Court Judge sitting on Supreme Court, 3-5-213.

Judicial officers liable to impeachment, 5-5-401.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2936, 2937.

Committee report, Vol. I 486, 487, 494, 495, 510, 516; Vol. II 913, 917, 922, 924, 1061.

Cross-references, 1889 and 1972 Constitutions, Vol. I 528 through 530.

Debate — committee report, Trans. 1044 through 1049, 1063 through 1071.

Debate — style and drafting report, Trans. 2179, 2180, 2926.

Delegate proposals, Vol. I 84, 85, 140, 141, 205.

Final consideration, Trans. 2436 through 2438.

Text as adopted, Vol. II 1096.

Section 4. District court jurisdiction. (1) The district court has original jurisdiction in all criminal cases amounting to felony and all civil matters and cases at law and in equity. It may issue all writs appropriate to its jurisdiction. It shall have the power of naturalization and such additional jurisdiction as may be delegated by the laws of the United States or the state of Montana. Its process shall extend to all parts of the state.

(2) The district court shall hear appeals from inferior courts as trials anew unless otherwise provided by law. The legislature may provide for direct review by the district court of decisions of administrative agencies.

(3) Other courts may have jurisdiction of criminal cases not amounting to felony and such jurisdiction concurrent with that of the district court as may be provided by law.

Cross-References

Judicial officer defined, 1-1-202.

Judicial review of contested cases under Montana Administrative Procedure Act, Title 2, ch. 4, part 7.

Immunity from suit for judicial acts and omissions, 2-9-112.

Jurisdiction over claims against governmental entities, 2-9-311.

Court approval of attorney fees in tort action against governmental entity, 2-9-314.

Appeal of refusal to accept recall petition, 2-16-615.

Courts and judicial officers generally, Title 3, ch. 1.

Restrictions on judicial officers, Title 3, ch. 1, part 6.

District Courts, Title 3, ch. 5.

State assumption of certain District Court expenses, 3-5-901 through 3-5-903.

Concurrent jurisdiction with Municipal Courts, 3-6-103.

District Court Judge as Water Judge, 3-7-201.

Jurisdiction of Justices' Courts, Title 3, ch. 10, part 3.

Removal of action from District Court to Small Claims Court, 3-10-1004.

Jurisdiction of City Courts, Title 3, ch. 11, part 1.

Small Claims Courts, Title 3, ch. 12.

Jury trials in District Courts, Title 3, ch. 15, part 5.

Judicial district for new county, 7-2-2228.

Transfer of court files and actions when new county created, 7-2-2255; Title 7, ch. 2, part 24.

County budget for District Courts, 7-6-2351, 7-6-2352.

County tax levy for District Court expenses, 7-6-2511.

Appointment of acting District Court Judge to replace judge entering military service, 10-2-227.

Filling of vacancy in Board of County Commissioners following enemy attack, 10-3-603.

Judicial review of decisions of State Tax Appeal Board, 15-2-303.

Interlocutory adjudication of issue pending before State Tax Appeal Board, 15-2-305.

Jurisdiction as to violation of Montana Alcoholic Beverage Code, 16-6-201, 41-5-203.

Appeal of conviction under Montana Alcoholic Beverage Code, 16-6-202.

Appeal of revocation or suspension of licenses under The Montana Cigarette Sales Act, 16-11-144, 16-11-150.

Jurisdiction with regard to state contracts, 18-1-401.

Excuse regarding compulsory school attendance, 20-5-102.

Appeal of decision of school trustees to sell property, 20-6-604.

Civil Procedure, Title 25.

Appeals to Supreme Court, Title 25, ch. 12.

Evidence, Title 26.

Remedies, Title 27.

Judicial review of orders of Securities Commissioner, 30-10-308.

Powers and duties with respect to assignments for benefit of creditors, Title 31, ch. 2, part 2.

Judicial review of decision of Department of Commerce regarding new bank applications, 32-1-204.

Appeal of disallowance of claim by Department of Commerce in dissolution, closing, or liquidation of bank, 32-1-532.

Appeal of decision of Department of Fish, Wildlife, and Parks regarding outfitter or guide license, 37-47-343.

Collection of unpaid wages, 39-3-212.

Solemnization of marriage by court, 40-1-301.

District Court as Conciliation Court, 40-3-111.

Powers and duties with respect to termination of marriage, child custody, and support, Title 40, ch. 4.

Uniform Reciprocal Enforcement of Support Act, Title 40, ch. 5, part 1.

Uniform Parentage Act, Title 40, ch. 6, part 1.

Uniform Child Custody Jurisdiction Act, Title 40, ch. 7.

Child abuse, neglect, and dependency, Title 41, ch. 3.

Montana Youth Court Act, Title 41, ch. 5.

Appeal of disciplinary action against highway patrol officer, 44-1-901, 44-1-902.

Crimes, Title 45.

Criminal Procedure, Title 46.

District Court jurisdiction — public offenses not otherwise provided for, 46-2-201.

Interpreters for the deaf in official proceedings, Title 49, ch. 4, part 5.

Appeal of decision of Department of Transportation regarding aircraft regulation and licensing, 67-3-104.

Landlord and tenant laws, Title 70, ch. 24 through 26.

Forcible entry and detainer — unlawful detainer, Title 70, ch. 27.

Quiet title actions, Title 70, ch. 28.

Action for partition of real property, 70-29-101.

Jurisdiction in eminent domain proceedings, 70-30-202.

Estates, Trusts, and Fiduciary Relationships, Title 72.

Judicial review of air quality orders, 75-2-411.

Judicial review of decision regarding water pollution, 75-5-621, 75-5-641.

Judicial review of decision regarding public water supplies, 75-6-111.

Appointment of members of streambed alteration project arbitration panel, 75-7-114.

Judicial review of decision of Department of Fish, Wildlife, and Parks under The Natural Streambed and Land Preservation Act of 1975, 75-7-121.

Appeal of decisions under Montana Major Facility Siting Act, 75-20-219, 75-20-410.

Appeal of zoning decision, 76-2-110.

Appeal of decision of county board of zoning adjustment to court of record, 76-2-327, 76-2-328.

Appeal of order of Department of Natural Resources and Conservation regarding floodways and floodplains, 76-5-209.

Collection of amount due for forest fire protection, 76-13-211.

Appeal of decision of Board of Adjustment of variance concerning conservation district land use regulations, 76-15-726, 76-15-727.

Appeal of disputed appraisal for hail loss, 80-2-243.

Appeal of decision of Department of Livestock regarding certificate of livestock market, 81-8-255.

Appeal of decision of Department of Livestock regarding dairy products licensing, 81-22-203.

Appeal of assessment of damages for land taken for mining right-of-way, 82-2-209 through 82-2-212.

Appeal of irrigation district decrees, Title 85, ch. 7, part 22.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2936, 2937.

Committee report, Vol. I 487, 488, 492, 496, 497, 499, 510, 511, 516 through 518; Vol. II 913, 914, 917, 918, 922, 924, 925, 1061, 1062.

Cross-references, 1889 and 1972 Constitutions, Vol. I 528 through 530.

Debate — committee report, Trans. 1016, 1019, 1020, 1029, 1030, 1036, 1041, 1049 through 1057, 1073 through 1080.

Debate — style and drafting report, Trans. 2179 through 2181, 2926.

Delegate proposals, Vol. I 85 through 89, 112, 140, 141, 291.

Final consideration, Trans. 2438, 2439.

Text as adopted, Vol. II 1096.

Section 5. Justices of the peace. (1) There shall be elected in each county at least one justice of the peace with qualifications, training, and monthly compensation provided by law. There shall be provided such facilities that they may perform their duties in dignified surroundings.

(2) Justice courts shall have such original jurisdiction as may be provided by law. They shall not have trial jurisdiction in any criminal case designated a felony except as examining courts.

(3) The legislature may provide for additional justices of the peace in each county.

Cross-References

Judicial officer defined, 1-1-202.

Court may administer oaths, 1-6-101.

Immunity from suit for judicial acts or omissions, 2-9-112.

Courts and judicial offices generally, Title 3, ch. 1.

Restrictions on judicial officers, Title 3, ch. 1, part 6.

Training and certification of judges of courts of limited jurisdiction, Title 3, ch. 1, part 15.

Appellate jurisdiction of District Courts, 3-5-303, 46-17-311.

Concurrent jurisdiction with Municipal Courts, 3-6-103.

Justices' Courts, Title 3, ch. 10.

Concurrent jurisdiction with City Courts, 3-11-102.

Justice of the Peace as acting City Judge, 3-11-205.

Number of jurors in Justices' Courts, 3-15-107.

Jury trials in courts of limited jurisdiction, Title 3, ch. 15, part 7.

Justice of the Peace as county officer, 7-4-2203.

Jurisdiction as to violations of Montana Alcoholic Beverage Code, 16-6-201, 41-5-203.

Procedure in Justices' Courts, Title 25, ch. 31.

Appeal to District Courts from Justices' Courts, Title 25, ch. 33.

Small claims procedure in Justices' Courts, Title 25, ch. 35.

Confession of judgment in Justice's Court, 27-9-101.

Arrest in civil actions in Justice's Court, Title 27, ch. 16, part 10.

Solemnization of marriage by Justice of the Peace, 40-1-301.

Concurrent jurisdiction with Youth Court, 41-5-203.

Procedure following arrest by highway patrol officer, 44-1-1101, 44-1-1102.

Crimes, Title 45.

Criminal Procedure, Title 46.

Jurisdiction of Justices' Courts in criminal matters, 46-2-202.

Proceedings in Justice's Court in criminal matters, Title 46, ch. 17.

Collection of amount due for forest fire protection, 76-13-211.

Jurisdiction for livestock violations, 81-4-307, 81-8-217.

Jurisdiction for violation of aerial hunting law, 81-7-511.

Distribution of fish and game laws to Justices of the Peace, 87-1-405.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2936, 2937.

Committee report, Vol. I 489, 491, 500, 501, 505; Vol. II 914, 918, 922, 925, 1062.

Debate — committee report, Trans. 1012, 1014, 1019, 1020, 1022, 1029, 1030, 1083, 1084, 1120, 1121, 1140 through 1147, 1154 through 1179 [referred to as section 16].

Debate — style and drafting report, Trans. 2181, 2182, 2184, 2185, 2926.

Delegate proposals, Vol. I 152, 205, 206.

Final consideration, Trans. 2439, 2440.

Text as adopted, Vol. II 1096.

Section 6. Judicial districts. (1) The legislature shall divide the state into judicial districts and provide for the number of judges in each district. Each district shall be formed of compact territory and be bounded by county lines.

(2) The legislature may change the number and boundaries of judicial districts and the number of judges in each district, but no change in boundaries or the number of districts or judges therein shall work a removal of any judge from office during the term for which he was elected or appointed.

(3) The chief justice may, upon request of the district judge, assign district judges and other judges for temporary service from one district to another, and from one county to another.

Cross-References

Supreme Court rules on disqualification and substitution of judges, 3-1-803, 3-1-804.

Definition of districts and assignment of judges, Title 3, ch. 5, part 1.

Expenses of judge when out of district, 3-5-213.

Expenses of judge when not in county of residence, 3-5-215, 3-5-216.

Statewide jurisdiction of District Court Judges, 3-5-312.

Terms and location of District Courts, Title 3, ch. 5, part 4.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2936, 2937.

Committee report, Vol. I 488, 497, 511, 518, 519; Vol. II 914, 918, 922, 925, 1062.

Cross-references, 1889 and 1972 Constitutions, Vol. I 528 through 530.

Debate — committee report, Trans. 1080 through 1083 [referred to as section 5], 1110, 1163.

Debate — style and drafting report, Trans. 2182, 2183, 2926.

Delegate proposals, Vol. I 86, 88, 141, 163, 206.

Final consideration, Trans. 2440, 2441.

Text as adopted, Vol. II 1096.

Section 7. Terms and pay. (1) All justices and judges shall be paid as provided by law, but salaries shall not be diminished during terms of office.

(2) Terms of office shall be eight years for supreme court justices, six years for district court judges, four years for justices of the peace, and as provided by law for other judges.

Cross-References

Term, salary, and expenses of Workers' Compensation Judge, 2-15-1707.

Salaries and expenses of Supreme Court Justices, 2-16-403, 3-2-104.

Group insurance, Title 2, ch. 18, parts 7 and 8.

Restrictions on judicial officers, Title 3, ch. 1, part 6.

Term of office for Supreme Court Justices, 3-2-101, 3-2-103.

Term of office for District Court Judge, 3-5-203, 3-5-204.

Salaries and expenses of District Court Judge, 3-5-211 through 3-5-216.

Term of office for Municipal Court Judge, 3-6-201.

Salaries and expenses of Municipal Court Judge, 3-6-203.

Term of office of Water Judges, 3-7-202.

Term of office of Justices of the Peace, 3-10-205.

Salaries and expenses of Justices of the Peace, 3-10-207 through 3-10-209.

Term of office of City Judges, 3-11-201.

Salaries and expenses of City Judges, 3-11-202.

District Court budget, 7-6-2351.

State grants to District Courts, 7-6-2352.

County levy for District Court expenses, 7-6-2511.

Judges' retirement system, Title 19, ch. 5.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2936, 2937.

Committee report, Vol. I 487 through 489, 491, 495, 500, 504, 511, 519; Vol. II 914, 919, 922, 925, 1062.

Cross-references, 1889 and 1972 Constitutions, Vol. I 528 through 530.

Debate — committee report, Trans. 1020, 1067, 1083, 1084, 1086, 1087, 1089, 1090, 1093, 1097, 1101, 1107, 1110, 1114 through 1119 [referred to as section 6], 1150 through 1154.

Debate — style and drafting report, Trans. 2183 through 2185, 2926.

Delegate proposals, Vol. I 86 through 88, 206, 225.

Final consideration, Trans. 2441, 2442.

Text as adopted, Vol. II 1096.

Section 8. Selection. (1) Supreme court justices and district court judges shall be elected by the qualified electors as provided by law.

(2) For any vacancy in the office of supreme court justice or district court judge, the governor shall appoint a replacement from nominees selected in the manner provided by law. If the governor fails to appoint within thirty days after receipt of nominees, the chief justice or acting chief justice shall make the appointment from the same nominees within thirty days of the governor's failure to appoint. Appointments made under this subsection shall be subject to confirmation by the senate, as provided by law. If the appointee is not confirmed, the office shall be vacant and a replacement shall be made under the procedures provided for in this section. The appointee shall serve until the election for the office as provided by law and until a successor is elected and qualified. The person elected or retained at the election shall serve until the expiration of the term for which his predecessor was elected. No appointee, whether confirmed or unconfirmed, shall serve past the term of his predecessor without standing for election.

(3) If an incumbent files for election and there is no election contest for the office, the name of the incumbent shall nevertheless be placed on the general election ballot to allow the voters of the state or district to approve or reject him. If an incumbent is rejected, the vacancy in the office for which the election was held shall be filled as provided in subsection (2).

Cross-References

Judicial Nomination Commission, Title 3, ch. 1, part 10.

Judicial Standards Commission, Title 3, ch. 1, part 11.

Vacancy in office of Justice of the Peace, 3-10-206.

Procedure regarding Senate confirmation of gubernatorial appointments, Title 5, ch. 5, part 3.

Judicial elections, Title 13, ch. 14, part 2.

Political parties prohibited from endorsing, contributing to, or making expenditure to support or oppose judicial candidate, 13-35-231.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2936, 2937.

Committee report, Vol. I 511, 512, 519 through 521; Vol. II 914, 915, 919, 922, 925, 926, 1062, 1063, 1080, 1107.

Cross-references, 1889 and 1972 Constitutions, Vol. I 528 through 530.

Debate — committee report, Trans. 1012 through 1014, 1016, 1017, 1022 through 1028, 1030 through 1033, 1069, 1081, 1082, 1084 through 1114 [referred to as section 7], 1116, 1838.

Debate — style and drafting report, Trans. 2185, 2186, 2926.

Delegate proposals, Vol. I 87, 141, 206.

Final consideration, Trans. 2442, 2443.

Text as adopted, Vol. II 1096, 1097.

Section 9. Qualifications. (1) A citizen of the United States who has resided in the state two years immediately before taking office is eligible to the office of supreme court justice or district court judge if admitted to the practice of law in Montana for at least five years prior to the date of appointment or election. Qualifications and methods of selection of judges of other courts shall be provided by law.

(2) No supreme court justice or district court judge shall solicit or receive compensation in any form whatever on account of his office, except salary and actual necessary travel expense.

(3) Except as otherwise provided in this constitution, no supreme court justice or district court judge shall practice law during his term of office, engage in any other employment for which salary or fee is paid, or hold office in a political party.

(4) Supreme court justices shall reside within the state. During his term of office, a district court judge shall reside in the district and a justice of the peace shall reside in the county in which he is elected or appointed. The residency requirement for every other judge must be provided by law.

Cross-References

Supreme Court to make rules regarding admission to bar, Art. VII, sec. 2, Mont. Const.

Compensation, Art. VII, sec. 7, Mont. Const.

Forfeiture of judicial position, Art. VII, sec. 10, Mont. Const.

Removal and discipline, Art. VII, sec. 11, Mont. Const.

Rules for determining residence generally, 1-1-215.

Qualifications of Workers' Compensation Judge, 2-15-1707.

Qualifications for public officers generally, 2-16-102.

Montana Recall Act, Title 2, ch. 16, part 6.

Restrictions on judicial officers, Title 3, ch. 1, part 6.

Qualifications for Supreme Court Justices, 3-2-102.

Qualifications for District Court Judges, 3-5-202.

Qualifications for Municipal Judges, 3-6-202.

Qualifications for Water Judges, 3-7-201.

Qualifications for Justices of the Peace, 3-10-202, 3-10-203.

Qualifications for City Judges, 3-11-202, 3-11-204.

Residence for election purposes, 13-1-112 through 13-1-114.

Attorneys at law, Title 37, ch. 61.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2936, 2937.

Committee report, Vol. I 484, 487 through 489, 491, 492, 495, 496, 498 through 500, 504 through 506, 512, 521 through 523; Vol. II 915, 919, 920, 922, 926, 1063.

Cross-references, 1889 and 1972 Constitutions, Vol. I 528 through 530.

Debate — committee report, Trans. 1012, 1020, 1118 through 1121 [referred to as section 8], 1154, 1179, 1746, 1747.

Debate — style and drafting report, Trans. 2186, 2187, 2926.

Delegate proposals, Vol. I 86 through 88, 141, 206.

Final consideration, Trans. 2443 through 2445.

Text as adopted, Vol. II 1097.

Section 10. Forfeiture of judicial position. Any holder of a judicial position forfeits that position by either filing for an elective public office other than a judicial position or absenting himself from the state for more than 60 consecutive days.

Cross-References

Selection upon vacancy, Art. VII, sec. 8, Mont. Const.

Judicial officers defined, 1-1-202.

Absence of certain officers from state for more than 60 consecutive days prohibited, 2-16-112.

Vacancy created by change of residence or absence from state, 2-16-501.

Supreme Court Justices or District Court Judge to resign prior to filing as candidate for another office, 3-1-607, 3-1-608.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2936, 2937.

Committee report, Vol. I 492, 507, 512, 522; Vol. II 915, 920, 926, 1063.

Cross-references, 1889 and 1972 Constitutions, Vol. I 528 through 530.

Debate — committee report, Trans. 1119 through 1121, 1148 through 1150 [referred to as section 8].

Debate — style and drafting report, Trans. 2186, 2187, 2926.

Final consideration, Trans. 2445, 2446.

Text as adopted, Vol. II 1097.

Section 11. Removal and discipline. (1) The legislature shall create a judicial standards commission consisting of five persons and provide for the appointment thereto of two district judges, one attorney, and two citizens who are neither judges nor attorneys.

(2) The commission shall investigate complaints, and make rules implementing this section. It may subpoena witnesses and documents.

(3) Upon recommendation of the commission, the supreme court may:

(a) Retire any justice or judge for disability that seriously interferes with the performance of his duties and is or may become permanent; or

(b) Censure, suspend, or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, violation of canons of judicial ethics adopted by the supreme court of the state of Montana, or habitual intemperance.

(4) The proceedings of the commission are confidential except as provided by statute.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Restrictions on judicial officers, Title 3, ch. 1, part 6.

Judicial Standards Commission, Title 3, ch. 1, part 11.

Official misconduct, 45-7-401.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2936, 2937.

Committee report, Vol. I 489, 490, 501 through 503, 512, 513, 518, 519, 523, 524; Vol. II 915, 916, 920 through 923, 926, 927, 1063, 1064.

Debate — committee report, Trans. 1029, 1122 through 1127 [referred to as section 10], 1163.

Debate — style and drafting report, Trans. 2187, 2188, 2926.

Delegate proposals, Vol. I 87, 88, 141, 205, 206.

Final consideration, Trans. 2446, 2447.

Text as adopted, Vol. II 1097.

ARTICLE VIII

REVENUE AND FINANCE

Section
1. Tax purposes.
2. Tax power inalienable.
3. Property tax administration.
4. Equal valuation.
5. Property tax exemptions.
6. Highway revenue non-diversion.
7. Tax appeals.
8. State debt.
9. Balanced budget.
10. Local government debt.
11. Use of loan proceeds.
12. Strict accountability.
13. Investment of public funds.
14. Prohibited payments.
15. Public retirement system assets.
16. Limitation on sales tax or use tax rates.

Article Cross-References

Appropriations not subject to initiative, Art. III, sec. 4, Mont. Const.

Appropriations not subject to referendum, Art. III, sec. 5, Mont. Const.

Governor to submit budget to Legislature, Art. VI, sec. 9, Mont. Const.

Resource indemnity trust, Art. IX, sec. 2, Mont. Const.

Coal severance tax trust fund, Art. IX, sec. 5, Mont. Const.

Public school fund, Art. X, sec. 2, 3, and 5, Mont. Const.

University funds, Art. X, sec. 10, Mont. Const.

Director of Department of Administration as ex officio State Treasurer, 2-15-1002.

State Tax Appeal Board created, 2-15-1015.

Department of Revenue, Title 2, ch. 15, part 13.

Advisory council for Multistate Tax Compact, 2-15-1311.

The Legislative Finance Act, Title 5, ch. 12.

The Legislative Audit Act, Title 5, ch. 13.

Revenue Oversight Committee, Title 5, ch. 18.

Local government financial administration and taxation, Title 7, ch. 6.

Local government debt management, Title 7, ch. 7.

Special improvement districts, Title 7, ch. 12.

Utility services, Title 7, ch. 13.

Taxation, Title 15.

Alcohol and tobacco taxation, Title 16.

State Finance, Title 17.

Authority of Department of Administration to issue bonds, 18-2-105.

School finance, Title 20, ch. 9.

Community college finance, Title 20, ch. 15, parts 3 and 4.

University System finance, Title 20, ch. 25, part 4.

Issuance of bonds for university purposes, 20-25-402.

Issuance of bonds for public library purposes, 22-1-304.

Issuance of bonds for airport purposes, 67-10-402, 67-11-303.

Inheritance and estate tax, Title 72, ch. 16.

Issuance of solid waste management systems bonds, 75-10-112.

Issuance of bonds under Open-Space Land and Voluntary Conservation Easement Act, 76-6-109.

Issuance of conservation district bonds, 76-15-506.

Renewable resource grant and loan program, Title 85, ch. 1, part 6.

Issuance of bonds for industrial development projects, Title 90, ch. 5.

Issuance of bonds under Housing Act of 1975, 90-6-111 through 90-6-126.

Section 1. Tax purposes. Taxes shall be levied by general laws for public purposes.

Cross-References

Local and special legislation, Art. V, sec. 12, Mont. Const.

Taxation, Title 15.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2937, 2938.

Committee report, Vol. II 579, 580, 582 through 584, 588, 945, 947, 951, 1065.

Cross-references, 1889 and 1972 Constitutions, Vol. II 582.

Debate — committee report, Trans. 1376 through 1378.

Debate — style and drafting report, Trans. 2217, 2926 through 2928.

Delegate proposals, Vol. I 95, 101, 114, 132, 306.

Final consideration, Trans. 2461, 2462.

Text as adopted, Vol. II 1097.

Section 2. Tax power inalienable. The power to tax shall never be surrendered, suspended, or contracted away.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2937, 2938.

Committee report, Vol. II 579 through 581, 584, 588, 945, 947, 950, 951, 1065.

Cross-references, 1889 and 1972 Constitutions, Vol. II 581.

Debate — committee report, Trans. 1376, 1378, 1379, 1425, 1501.

Debate — style and drafting report, Trans. 2217, 2926 through 2928.

Delegate proposals, Vol. I 306.

Final consideration, Trans. 2462, 2463.

Text as adopted, Vol. II 1097.

Section 3. Property tax administration. The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law.

Cross-References

Department of Revenue, Title 2, ch. 15, part 13.

Tax administration, Title 15, ch. 1.

Property subject to taxation, Title 15, ch. 6.

Appraisal of property, Title 15, ch. 7.

Assessment procedure, Title 15, ch. 8.

Equalization, Title 15, ch. 9.

Centrally assessed property, Title 15, ch. 23.

Special property tax applications, Title 15, ch. 24.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2937, 2938.

Committee report, Vol. II 579, 580, 582, 584, 588 through 591, 594, 945, 947, 950, 951, 1065.

Cross-references, 1889 and 1972 Constitutions, Vol. II 582.

Debate — committee report, Trans. 1376, 1379 through 1409, 1501, 2286, 2289.

Debate — style and drafting report, Trans. 2217 through 2219, 2926 through 2928.

Delegate proposals, Vol. I 129, 167, 174, 264, 265, 306, 307.

Final consideration, Trans. 2463, 2464.

Text as adopted, Vol. II 1097.

Section 4. Equal valuation. All taxing jurisdictions shall use the assessed valuation of property established by the state.

Cross-References

Assessment made by Department of Revenue basis for municipal taxation, 7-6-4409.

Appraisal of property, Title 15, ch. 7.

Assessment procedures, Title 15, ch. 8.

Equalization, Title 15, ch. 9.

Centrally assessed property, Title 15, ch. 23.

Special property tax applications, Title 15, ch. 24.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2937, 2938.

Committee report, Vol. II 581, 582, 584, 589, 590, 945, 947, 950, 951, 1065.

Cross-references, 1889 and 1972 Constitutions, Vol. II 581.

Debate — committee report, Trans. 1376, 1409, 1410, 2153, 2289.

Debate — style and drafting report, Trans. 2218, 2219, 2926 through 2928.

Final consideration, Trans. 2464, 2465.

Text as adopted, Vol. II 1097.

Section 5. Property tax exemptions. (1) The legislature may exempt from taxation:

(a) Property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries, but any private interest in such property may be taxed separately.

(b) Institutions of purely public charity, hospitals and places of burial not used or held for private or corporate profit, places for actual religious worship, and property used exclusively for educational purposes.

(c) Any other classes of property.

(2) The legislature may authorize creation of special improvement districts for capital improvements and the maintenance thereof. It may authorize the assessment of charges for such improvements and maintenance against tax exempt property directly benefited thereby.

Cross-References

Improvement districts, Title 7, ch. 12.

Pedestrian malls and offstreet parking facilities, Title 7, ch. 14, part 47.

Tax-exempt property, Title 15, ch. 6, part 2.

Water conservation and flood control projects, Title 76, ch. 5, part 11.

Irrigation districts — taxes and assessments, Title 85, ch. 7, part 21.

Drainage districts — taxes and assessments, Title 85, ch. 8, part 6.

Conservancy districts — finance, Title 85, ch. 9, part 6.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2937, 2938.

Committee report, Vol. II 580, 584, 588, 590, 591, 599 through 601, 945, 947, 948, 950, 951, 1065.

Cross-references, 1889 and 1972 Constitutions, Vol. II 580.

Debate — committee report, Trans. 1376, 1379, 1410 through 1427, 1497, 1556 through 1558.

Debate — style and drafting report, Trans. 2219, 2220, 2926 through 2928.

Delegate proposals, Vol. I 99, 167, 306, 326.

Final consideration, Trans. 2465, 2466.

Text as adopted, Vol. II 1097, 1098.

Section 6. Highway revenue non-diversion. (1) Revenue from gross vehicle weight fees and excise and license taxes (except general sales and use taxes) on gasoline, fuel, and other energy sources used to propel vehicles on public highways shall be used as authorized by the legislature, after deduction of statutory refunds and adjustments, solely for:

(a) Payment of obligations incurred for construction, reconstruction, repair, operation, and maintenance of public highways, streets, roads, and bridges.

(b) Payment of county, city, and town obligations on streets, roads, and bridges.

(c) Enforcement of highway safety, driver education, tourist promotion, and administrative collection costs.

(2) Such revenue may be appropriated for other purposes by a three-fifths vote of the members of each house of the legislature.

Cross-References

Department of Transportation, Title 2, ch. 15, part 25.

Gasoline and vehicle fuels taxes, Title 15, ch. 70.

Aviation fuel tax allocated to Department of Transportation for aviation purposes, 15-70-204, 67-1-301.

License tax on vehicles propelled by liquefied petroleum gas, Title 15, ch. 71.

General obligation highway bonds — pledge of portion of gasoline tax revenue, Title 17, ch. 5, part 5.

Highway revenue bonds — pledge of revenue, Title 17, ch. 5, part 9.

Highways, Title 60.

Distribution and apportionment of highway funds, Title 60, ch. 3.

Motor Vehicles, Title 61.

Gross vehicle weight licensing requirements, Title 61, ch. 10, part 2.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2937, 2938.

Committee report, Vol. II 580, 584, 585, 591, 592, 945, 946, 948, 950 through 952, 1065, 1066, 1080, 1107.

Cross-references, 1889 and 1972 Constitutions, Vol. II 580.

Debate — committee report, Trans. 1376, 1389, 1390, 1428 through 1466, 1469 through 1489, 1501, 2689, 2695, 2701 through 2717, 2779 through 2789.

Debate — style and drafting report, Trans. 2220 through 2243, 2926 through 2928.

Delegate proposals, Vol. I 187, 188.

Final consideration, Trans. 2466, 2467, 2779 through 2789, 2814, 2815.

Text as adopted, Vol. II 1098.

Section 7. Tax appeals. The legislature shall provide independent appeal procedures for taxpayer grievances about appraisals, assessments, equalization, and taxes. The legislature shall include a review procedure at the local government unit level.

Cross-References

State Tax Appeal Board, 2-15-1015; Title 15, ch. 2.

County Tax Appeal Board, Title 15, ch. 15.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2937, 2938.

Committee report, Vol. II 582, 585, 589, 592 through 594, 946, 948, 950, 952, 1066.

Cross-references, 1889 and 1972 Constitutions, Vol. II 582.

Debate — committee report, Trans. 1376, 1382, 1390, 1392, 1393, 1397, 1402, 1407, 1489, 1490.

Debate — style and drafting report, Trans. 2243, 2926 through 2928.

Final consideration, Trans. 2467, 2468.

Text as adopted, Vol. II 1098.

Section 8. State debt. No state debt shall be created unless authorized by a two-thirds vote of the members of each house of the legislature or a majority of the electors voting thereon. No state debt shall be created to cover deficits incurred because appropriations exceeded anticipated revenue.

Cross-References

Legislature, Art. V, Mont. Const.; Title 5.

Balanced budget, Art. VIII, sec. 9, Mont. Const.

Local government debt, Art. VIII, sec. 10, Mont. Const.

Use of loan proceeds, Art. VIII, sec. 11, Mont. Const.

Effect of 1972 Montana Constitution on existing public bonds, debts, and contracts, Transition Schedule, sec. 6, Mont. Const.

State Finance, Title 17.

Public bond issues, Title 17, ch. 5.

Statutory appropriations, Title 17, ch. 7, part 5.

Public Contracts, Title 18.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2937, 2938.

Committee report, Vol. II 583, 585, 586, 594, 946, 948, 950, 952, 1066, 1080, 1107.

Cross-references, 1889 and 1972 Constitutions, Vol. II 583.

Debate — committee report, Trans. 1376, 1490 through 1508.

Debate — style and drafting report, Trans. 2243, 2244, 2926 through 2928.

Final consideration, Trans. 2468, 2469.

Text as adopted, Vol. II 1098.

Section 9. Balanced budget. Appropriations by the legislature shall not exceed anticipated revenue.

Cross-References

Appropriation bills, Art. V, sec. 11, Mont. Const.

Governor to prepare budget, Art. VI, sec. 9, Mont. Const.

State debt, Art. VIII, sec. 8, Mont. Const.

Strict accountability of state money, Art. VIII, sec. 12, Mont. Const.

Legislative findings — liability exposure, 2-9-106.

Fiscal notes for legislative bills, Title 5, ch. 4, part 2.

The Legislative Finance Act, Title 5, ch. 12.

State Finance, Title 17.

Budgeting and appropriations, title 17, ch. 7.

Statutory appropriations, Title 17, ch. 7, part 5.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2937, 2938.

Committee report, Vol. II 582, 586, 595, 946, 949, 950, 952, 1066.

Cross-references, 1889 and 1972 Constitutions, Vol. II 582.

Debate — committee report, Trans. 1376, 1490, 1493, 1494, 1508, 1509, 2135, 2136.

Debate — style and drafting report, Trans. 2244, 2926 through 2928.

Delegate proposal, Vol. I 307.

Final consideration, Trans. 2469, 2470.

Text as adopted, Vol. II 1098.

Section 10. Local government debt. The legislature shall by law limit debts of counties, cities, towns, and all other local governmental entities.

Cross-References

Local government, Art. XI, Mont. Const.

Local government financial administration and taxation, Title 7, ch. 6.

Local government debt management, Title 7, ch. 7.

Limit on bonded indebtedness of urban transportation district, 7-14-236.

School finance, Title 20, ch. 9.

Limit on bonded indebtedness of school district, 20-9-406.

Limit on bonded indebtedness of community college district, 20-15-404.

University System finance, Title 20, ch. 25, part 4.

Debt limits of irrigation district, 85-7-2001.

Debt limits of drainage district, 85-8-501.

Debt limits of conservancy district, 85-9-406.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2937, 2938.

Committee report, Vol. II 583, 586, 595, 946, 949, 950, 952, 1066.

Cross-references, 1889 and 1972 Constitutions, Vol. II 583.

Debate — committee report, Trans. 1509 through 1516.

Debate — style and drafting report, Trans. 2244, 2245, 2926 through 2928.

Final consideration, Trans. 2470 through 2472.

Text as adopted, Vol. II 1098.

Section 11. Use of loan proceeds. All money borrowed by or on behalf of the state or any county, city, town, or other local governmental entity shall be used only for purposes specified in the authorizing law.

Cross-References

Strict accountability of public money, Art. VIII, sec. 12, Mont. Const.

Local Government, Title 7.

Local government finance and taxation, Title 7, ch. 6.

Local government debt management, Title 7, ch. 7.

Special improvement districts, Title 7, ch. 12.

State Finance, Title 17.

Public bond issues, Title 17, ch. 5.

Authority of Department of Administration to issue bonds, 18-2-105.

School finance, Title 20, ch. 9.

Community college district financing, Title 20, ch. 15, parts 3 and 4.

University System finance, Title 20, ch. 25, part 4.

Issuance of bonds for university purposes, 20-25-402.

Issuance of bonds for public library purposes, 22-1-304.

Issuance of bonds for airport purposes, 67-10-402, 67-11-303.

Issuance of solid waste management systems bonds, 75-10-112.

Issuance of bonds under Open-Space Land and Voluntary Conservation Easement Act, 76-6-109.

Issuance of conservation district bonds, 76-15-506.

Montana Agricultural Loan Authority Act, Title 80, ch. 12.

Renewable resource grant and loan program, Title 85, ch. 1, part 6.

Issuance of bonds for industrial development projects, Title 90, ch. 5, part 1.

Issuance of bonds under Housing Act of 1975, 90-6-111 through 90-6-126.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2937, 2938.

Committee report, Vol. II 583, 586, 595, 946, 949, 950, 952, 1066.

Cross-references, 1889 and 1972 Constitutions, Vol. II 583.

Debate — committee report, Trans. 1376, 1516.

Debate — style and drafting report, Trans. 2245, 2926 through 2928.

Final consideration, Trans. 2472, 2473.

Text as adopted, Vol. II 1098.

Section 12. Strict accountability. The legislature shall by law insure strict accountability of all revenue received and money spent by the state and counties, cities, towns, and all other local governmental entities.

Cross-References

Use of loan proceeds, Art. VIII, sec. 11, Mont. Const.

Investment of public funds, Art. VIII, sec. 13, Mont. Const.

Prohibited payments, Art. VIII, sec. 14, Mont. Const.

Audits of political subdivisions, Title 2, ch. 7, part 5.

Director of Department of Administration as ex officio State Treasurer, 2-15-1002.

Board of Examiners, 2-15-1007.

Board of Investments, 2-15-1808.

The Legislative Audit Act, Title 5, ch. 13.

Local Government, Title 7.

Taxation, Title 15.

State Finance, Title 17.

Public Contracts, Title 18.

School finance, Title 20, ch. 9.

Community college finance, Title 20, ch. 15, parts 3 and 4.

University System finance, Title 20, ch. 25, part 4.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2937, 2938.

Committee report, Vol. II 581, 582, 586, 595, 596, 946, 949, 950, 952, 1066.

Cross-references, 1889 and 1972 Constitutions, Vol. II 581.

Debate — committee report, Trans. 921, 924, 1001, 1002, 1376, 1516, 1517.

Debate — style and drafting report, Trans. 2245, 2926 through 2928.

Delegate proposal, Vol. I 307.

Final consideration, Trans. 2473, 2474.

Text as adopted, Vol. II 1098.

Section 13. Investment of public funds and public retirement system assets. (1) The legislature shall provide for a unified investment program for public funds and public retirement system assets and provide rules therefor, including supervision of investment of surplus funds of all counties, cities, towns, and other local governmental entities. Each fund forming a part of the unified investment program shall be separately identified. Except as provided in subsection (3), no public funds shall be invested in private corporate capital stock. The investment program shall be audited at least annually and a report thereof submitted to the governor and legislature.

(2) The public school fund and the permanent funds of the Montana university system and all other state institutions of learning shall be safely and conservatively invested in:

(a) Public securities of the state, its subdivisions, local government units, and districts within the state, or

(b) Bonds of the United States or other securities fully guaranteed as to principal and interest by the United States, or

(c) Such other safe investments bearing a fixed rate of interest as may be provided by law.

(3) Investment of public retirement system assets shall be managed in a fiduciary capacity in the same manner that a prudent expert acting in a fiduciary capacity and familiar with the circumstances would use in the conduct of an enterprise of a similar character with similar aims. Public retirement system assets may be invested in private corporate capital stock.

Cross-References

Strict accountability of public money, Art. VIII, sec. 12, Mont. Const.

Board of Investments, 2-15-1808.

Investment of county or county high school money, 7-6-2701, 7-7-2112, 20-9-213.

Investment of coal severance tax trust fund, 15-35-108.

State Finance, Title 17.

Unified investment program, Title 17, ch. 6, part 2.

Montana In-State Investment Act, Title 17, ch. 6, part 3.

Investment of funds in agency Social Security contribution account, 19-1-602.

Investment of funds under public employees' retirement system, 19-2-504.

Investment of funds under firefighters' retirement system, 19-18-403.

Police retirement — local funds — investment of fund, 19-19-203.

Investment of funds under teachers' retirement system, 19-20-501.

Notice of sale or redemption of school bonds sent to Board of Investments, 20-9-431, 20-9-441.

Purchase and payment on school district bonds bought by Board of Investments, 20-9-433, 20-9-435.

Investment of proceeds from leasing, use, sale, or disposition of state lands, 77-1-202.

Investment of funds in resource development account, 77-1-609.

Investment of Board of Hail Insurance funds, 80-2-222.

Investment of proceeds from certain fees charged by Department of Agriculture, 80-9-207, 80-11-210.

Investment of funds from earmarked accounts of Department of Livestock, 81-1-104.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2937, 2938.

Committee report, Vol. II 583, 586, 596, 597, 602, 603, 753 through 756, 946, 949, 950, 952, 953, 1066, 1067.

Cross-references, 1889 and 1972 Constitutions, Vol. II 583.

Debate — committee report, Trans. 1002, 1376, 1517 through 1546, 1948, 2068, 2150, 2151.

Debate — style and drafting report, Trans. 2245, 2246, 2433, 2434, 2926 through 2928.

Final consideration, Trans. 2474, 2475.

Text as adopted, Vol. II 1098.

Section 14. Prohibited payments. Except for interest on the public debt, no money shall be paid out of the treasury unless upon an appropriation made by law and a warrant drawn by the proper officer in pursuance thereof.

Cross-References

Appropriation bills, Art. V, sec. 11, Mont. Const.

Strict accountability of public funds, Art. VIII, sec. 12, Mont. Const.

Director of Department of Administration as ex officio State Treasurer, 2-15-1002.

State Finance, Title 17.

Budgeting and appropriations, Title 17, ch. 7.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2937, 2938.

Committee report, Vol. II 866, 873, 875, 879, 884, 889, 1067.

Cross-references, 1889 and 1972 Constitutions, Vol. II 416.

Debate — committee report, Trans. 790 through 792, 797, 1366, 1376, 1517 [referred to as article iv (bicameral), section 15, and (unicameral), section 16].

Debate — style and drafting report, Trans. 1627, 2923, 2924, 2926 through 2928.

Final consideration, Trans. 1907, 1908.

Text as adopted, Vol. II 1098.

Section 15. Public retirement system assets. (1) Public retirement systems shall be funded on an actuarially sound basis. Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses.

(2) The governing boards of public retirement systems shall administer the system, including actuarial determinations, as fiduciaries of system participants and their beneficiaries.

History: En. Sec. 2, Const. Amend. No. 25, approved Nov. 8, 1994.

Section 16. Limitation on sales tax or use tax rates. The rate of a general statewide sales tax or use tax may not exceed 4%.

History: En. Sec. 1, Const. Amend. No. 27, approved Nov. 8, 1994.

Compiler's Comments

Compiler's Comment: This section was enacted as section 15 by sec. 1, Const. Amend. No. 27. The Code Commissioner has designated the section as section 16 because section 2 of Const. Amend. No. 25, approved at the same election, enacted a new section 15.

ARTICLE IX

ENVIRONMENT AND NATURAL RESOURCES

Section
1. Protection and improvement.
2. Reclamation.
3. Water rights.
4. Cultural resources.
5. Severance tax on coal — trust fund.

Article Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Section 1. Protection and improvement. (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.

(2) The legislature shall provide for the administration and enforcement of this duty.

(3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Department of Natural Resources and Conservation, Title 2, ch. 15, part 33.

Department of Fish, Wildlife, and Parks, Title 2, ch. 15, part 34.

Department of Environmental Quality, Title 2, ch. 15, part 35.

Water Courts, Title 3, ch. 7.

Environmental Quality Council, Title 5, ch. 16.

Coal severance tax, Title 15, ch. 35.

Oil and gas severance tax, Title 15, ch. 36.

Mining license taxes, Title 15, ch. 37.

Resource indemnity trust tax, Title 15, ch. 38.

Purpose of coal tax trust fund, 17-6-303.

Parks, Title 23, ch. 1.

Recreation, Title 23, ch. 2.

Environmental Protection, Title 75.

Hazardous substances — remedial actions, Title 75, ch. 10, part 7.

Uniform Transboundary Pollution Reciprocal Access Act, Title 75, ch. 16, part 1.

Minerals, Oil, and Gas, Title 82.

Water Use, Title 85.

Fish and Wildlife, Title 87.

Reclamation and development grants program, Title 90, ch. 2, part 11.

Renewable energy sources research and development, Title 90, ch. 4, part 1.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2938, 2939.

Committee report, Vol. II 550, 552, 554, 555, 561, 562, 931, 933, 935, 939, 1068.

Debate — committee report, Trans. 1199 through 1271, 1274, 1275, 1637 through 1640.

Debate — style and drafting report, Trans. 2210, 2211, 2928.

Delegate proposals, Vol. I 75, 96, 107, 108, 193, 240, 252, 261, 308, 309.

Final consideration, Trans. 2454, 2455.

Text as adopted, Vol. II 1099.

Section 2. Reclamation. (1) All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed.

(2) The legislature shall provide for a fund, to be known as the resource indemnity trust of the state of Montana, to be funded by such taxes on the extraction of natural resources as the legislature may from time to time impose for that purpose.

(3) The principal of the resource indemnity trust shall forever remain inviolate in an amount of one hundred million dollars ($100,000,000), guaranteed by the state against loss or diversion.

Cross-References

The Montana Resource Indemnity Trust and Ground Water Assessment Act, Title 15, ch. 38.

Environmental contingency grant program, Title 75, ch. 1, part 11.

Notice to surface owner of reclamation plan prior to commencement of mining operation, 82-2-303.

Reclamation, Title 82, ch. 4.

Restoration following plugging of oil or gas well, 82-11-123.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2938, 2939.

Committee report, Vol. II 552, 555, 556, 931, 933, 935, 939, 1068.

Debate — committee report, Trans. 1199, 1200, 1275 through 1301, 1353 through 1363.

Debate — style and drafting report, Trans. 2211 through 2213, 2928.

Final consideration, Trans. 2455, 2456.

Text as adopted, Vol. II 1099.

Section 3. Water rights. (1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.

(2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water shall be held to be a public use.

(3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

(4) The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records.

Cross-References

Reserved Water Rights Compact Commission, 2-15-212.

Water Pollution Control Advisory Council, 2-15-2107.

Board of Water Well Contractors, 2-15-3307.

Water Courts, Title 3, ch. 7.

Property tax exemptions for certain water projects, 15-6-205, 15-6-206.

Coal severance tax bonds — renewable resource and water development, Title 17, ch. 5, part 7.

Stream access, Title 23, ch. 2, part 3.

Smith River Management Act, Title 23, ch. 2, part 4.

Obstruction of navigable water as nuisance, 27-30-101, 45-8-111.

Licensing of water well contractors, Title 37, ch. 43, part 3.

Eminent domain, Title 70, ch. 30.

Environmental Protection, Title 75.

State policy to protect use of water for useful or beneficial purposes, 75-7-102.

Flood plain and floodway management, Title 76, ch. 5.

Protection of forest resources, Title 76, ch. 13, part 1.

Conservation districts — water conservation, Title 76, ch. 15, part 4.

Water projects on state lands, 77-1-605.

Geothermal resources, 77-4-104.

Protection of water from mining or reclamation projects, 82-4-251.

Water Use, Title 85.

Department assistance to Water Judges, 85-2-243.

Fish and Wildlife, Title 87.

Acquisition of water by Department of Fish, Wildlife, and Parks, 87-1-209.

Stream protection, Title 87, ch. 5, part 5.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2938, 2939.

Committee report, Vol. II 552, 553, 556, 557, 931, 933, 935, 939, 1068.

Cross-references, 1889 and 1972 Constitutions, Vol. II 563.

Debate — committee report, Trans. 151, 1301 through 1351, 2377, 2761.

Debate — style and drafting report, Trans. 2213, 2214, 2928.

Delegate proposals, Vol. I 76, 145, 213, 214, 255.

Final consideration, Trans. 2456, 2457.

Text as adopted, Vol. II 1099.

Section 4. Cultural resources. The legislature shall provide for the identification, acquisition, restoration, enhancement, preservation, and administration of scenic, historic, archeologic, scientific, cultural, and recreational areas, sites, records and objects, and for their use and enjoyment by the people.

Cross-References

Recognition of distinction and uniqueness of Indian culture, Art. X, sec. 1, Mont. Const.

Protection of Indian culture, 2-1-305.

Montana Historical Society, Montana Arts Council, and State Library Commission, 2-15-1511 through 2-15-1514.

Indian studies required for teachers under certain circumstances, 20-4-211 through 20-4-214.

Libraries, Arts, and Antiquities, Title 22.

Parks, Title 23, ch. 1.

Recreation, Title 23, ch. 2.

Indian affairs — planning and coordination, Title 90, ch. 11.

Montana natural heritage program, Title 90, ch. 15.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2938, 2939.

Committee report, Vol. II 550, 553, 558, 931 through 934, 939, 940, 1068.

Debate — committee report, Trans. 1199, 1351, 1352.

Debate — style and drafting report, Trans. 2214, 2928.

Delegate proposals, Vol. I 75, 193, 240.

Final consideration, Trans. 2457, 2458.

Text as adopted, Vol. II 1099.

Section 5. Severance tax on coal — trust fund. The legislature shall dedicate not less than one-fourth (1/4) of the coal severance tax to a trust fund, the interest and income from which may be appropriated. The principal of the trust shall forever remain inviolate unless appropriated by vote of three-fourths (3/4) of the members of each house of the legislature. After December 31, 1979, at least fifty percent (50%) of the severance tax shall be dedicated to the trust fund.

History: En. Const. Amend. No. 3, 1976.

Cross-References

Revenue and finance, Art. VIII, Mont. Const.

Coal Board, 2-15-1821.

Coal severance tax, Title 15, ch. 35.

Coal severance tax bonds — renewable resource and water development, Title 17, ch. 5, part 7.

Trust as separate investment fund, 17-6-203.

Permissible investments of coal tax trust fund, 17-6-211.

Purpose of coal tax trust fund, 17-6-303.

Cultural and aesthetic project grants, 22-2-301.

Acquisition of certain state parks, monuments, or historical sites, 23-1-108.

Renewable resource loan debt service fund — allocation of coal severance tax, 85-1-603.

Alternate energy research development and demonstration account, 90-4-103.

Coal impacts — evaluation and abatement funding, Title 90, ch. 6, part 2.

ARTICLE X

EDUCATION AND PUBLIC LANDS

Section
1. Educational goals and duties.
2. Public school fund.
3. Public school fund inviolate.
4. Board of land commissioners.
5. Public school fund revenue.
6. Aid prohibited to sectarian schools.
7. Nondiscrimination in education.
8. School district trustees.
9. Boards of education.
10. State university funds.
11. Public land trust, disposition.

Article Cross-References

Superintendent of Public Instruction as Executive Branch officer, Art. VI, sec. 1 through 4, 6, and 7, Mont. Const.

Education, Title 2, ch. 15, part 15; Title 20.

State Lands, Title 77.

Section 1. Educational goals and duties. (1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.

(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

(3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

Cross-References

Public school fund, Art. X, sec. 2 and 3, Mont. Const.

Nondiscrimination in education, Art. X, sec. 7, Mont. Const.; 49-2-307; 49-3-203.

State university funds, Art. X, sec. 10, Mont. Const.

State Board of Education, 2-15-1501.

Board of Regents of Higher Education, 2-15-1505.

Commissioner of Higher Education, 2-15-1506.

Board of Public Education, 2-15-1507.

Property tax exemption of property used for educational purposes, 15-6-201.

Education, Title 20.

Indian studies required of teachers under certain circumstances, 20-4-211 through 20-4-214.

Vocational and technical education, Title 20, ch. 7, part 3.

Montana State School for the Deaf and Blind, Title 20, ch. 8.

State equalization aid, Title 20, ch. 9, part 3.

Community college districts, Title 20, ch. 15.

University System, Title 20, ch. 25.

Charges for tuition — waivers, 20-25-421.

Libraries, Title 22, ch. 1.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2939, 2940.

Committee report, Vol. II 718, 721 through 725, 993, 996, 1002, 1003, 1069.

Cross-references, 1889 and 1972 Constitutions, Vol. II 757.

Debate — committee report, Trans. 1949 through 1989, 2022, 2151 through 2159.

Debate — style and drafting report, Trans. 2572, 2573, 2928.

Delegate proposals, Vol. I 95, 139, 143, 169, 170, 204, 284.

Final consideration, Trans. 2665 through 2667.

Text as adopted, Vol. II 1099.

Section 2. Public school fund. The public school fund of the state shall consist of: (1) Proceeds from the school lands which have been or may hereafter be granted by the United States,

(2) Lands granted in lieu thereof,

(3) Lands given or granted by any person or corporation under any law or grant of the United States,

(4) All other grants of land or money made from the United States for general educational purposes or without special purpose,

(5) All interests in estates that escheat to the state,

(6) All unclaimed shares and dividends of any corporation incorporated in the state,

(7) All other grants, gifts, devises or bequests made to the state for general educational purposes.

Cross-References

Public school fund inviolate, Art. X, sec. 3, Mont. Const.

Board of Land Commissioners, Art. X, sec. 4, Mont. Const.

Public school fund revenue, Art. X, sec. 5, Mont. Const.

State university funds, Art. X, sec. 10, Mont. Const.

Public land trust — disposition, Art. X, sec. 11, Mont. Const.

Public school fund as separate investment fund, 17-6-203.

Permissible investments for public school fund, 17-6-211.

Public school fund, Title 20, ch. 9, part 6.

Escheated Estates Act, Title 72, ch. 14.

State Lands, Title 77.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2939, 2940.

Committee report, Vol. II 583, 596, 718, 725, 726, 993, 996, 997, 1002, 1003, 1069.

Cross-references, 1889 and 1972 Constitutions, Vol. II 757.

Debate — committee report, Trans. 1957, 1989, 1990, 1995, 2143.

Debate — style and drafting report, Trans. 2573, 2574, 2928.

Final consideration, Trans. 2667, 2668.

Text as adopted, Vol. II 1099.

Section 3. Public school fund inviolate. The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion.

Cross-References

Public school fund, Art. X, sec. 2, Mont. Const.; Title 20, ch. 9, part 6.

Public school fund revenue, Art. X, sec. 5, Mont. Const.

State university funds, Art. X, sec. 10, Mont. Const.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2939, 2940.

Committee report, Vol. II 718, 726, 741, 742, 993, 997, 1003, 1004, 1069.

Cross-references, 1889 and 1972 Constitutions, Vol. II 757.

Debate — committee report, Trans. 1539 through 1544, 1948, 1990, 2146, 2148, 2245, 2246.

Debate — style and drafting report, Trans. 2574, 2927, 2928.

Delegate proposals, Vol. I 169, 176.

Final consideration, Trans. 2668, 2669.

Text as adopted, Vol. II 1100.

Section 4. Board of land commissioners. The governor, superintendent of public instruction, auditor, secretary of state, and attorney general constitute the board of land commissioners. It has the authority to direct, control, lease, exchange, and sell school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be provided by law.

Cross-References

Members as Executive Branch officers, Art. VI, sec. 1, Mont. Const.

Public land trust — disposition, Art. X, sec. 11, Mont. Const.

Governor as member, 2-15-201.

Secretary of State as member, 2-15-401.

Attorney General as member, 2-15-501.

Approval of Board required for state building leases required under some circumstances, 18-3-105.

Sale or lease of state land to school district, 20-6-621.

Deposit of interest and income of public school fund by Board, 20-9-342.

Community college trustees may accept funds, income, and property from Board, 20-15-225.

Board of Regents may accept funds, income, and property from Board, 20-25-301.

Power to accept recreational and camping ground, 23-1-103.

Protection of state resources from fire, 76-11-101.

Montana Natural Areas Act of 1974, Title 76, ch. 12, part 1.

Board's role in protection of forest resources, Title 76, ch. 13, parts 1 and 2.

State Lands, Title 77.

Exchanges of state land, Title 77, ch. 2, part 2.

Sales of state land, Title 77, ch. 2, part 3.

Board's role in reclamation, Title 82, ch. 4.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2939, 2940.

Committee report, Vol. II 718, 719, 726, 727, 994, 997, 1002, 1004, 1069, 1070.

Cross-references, 1889 and 1972 Constitutions, Vol. II 757.

Debate — committee report, Trans. 860, 863 through 865, 869, 874, 917, 1280, 1990 through 2002.

Debate — style and drafting report, Trans. 2574, 2575, 2928.

Delegate proposal, Vol. I 329.

Final consideration, Trans. 2669, 2670.

Text as adopted, Vol. II 1100.

Section 5. Public school fund revenue. (1) Ninety-five percent of all the interest received on the public school fund and ninety-five percent of all rent received from the leasing of school lands and all other income from the public school fund shall be equitably apportioned annually to public elementary and secondary school districts as provided by law.

(2) The remaining five percent of all interest received on the public school fund, and the remaining five percent of all rent received from the leasing of school lands and all other income from the public school fund shall annually be added to the public school fund and become and forever remain an inseparable and inviolable part thereof.

Cross-References

Public school fund, Art. X, sec. 2, Mont. Const.; Title 20, ch. 9, part 6.

Public school fund inviolate, Art. X, sec. 3, Mont. Const.

Deposit of interest and income money, 20-9-341, 20-9-342.

State Lands, Title 77.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2939, 2940.

Committee report, Vol. II 719, 727, 728, 994, 997, 1002, 1004, 1070.

Cross-references, 1889 and 1972 Constitutions, Vol. II 757.

Debate — committee report, Trans. 149, 1948, 1977, 2006 through 2008.

Debate — style and drafting report, Trans. 2575, 2928.

Delegate proposals, Vol. I 146, 169, 170.

Final consideration, Trans. 2670, 2671.

Text as adopted, Vol. II 1100.

Section 6. Aid prohibited to sectarian schools. (1) The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination.

(2) This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to non-public education.

Cross-References

Freedom of religion, Art. II, sec. 5, Mont. Const.

Religious discrimination in public schools prohibited — advocating sectarian tenets in public schools prohibited, Art. X, sec. 7, Mont. Const.

Religious instruction released time program, 20-1-308.

Religious exemption for immunization requirements, 20-5-405.

Accreditation of nonpublic high schools, 20-7-102.

Sectarian publications prohibited — prayer permitted in public schools, 20-7-112.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2939, 2940.

Committee report, Vol. II 629, 716, 719, 728 through 730, 743 through 747, 994, 997, 1002, 1004, 1070.

Cross-references, 1889 and 1972 Constitutions, Vol. II 757.

Debate — committee report, Trans. 1646, 1960, 2008 through 2031, 2235.

Debate — style and drafting report, Trans. 2575, 2576, 2928.

Delegate proposals, Vol. I 137, 189, 222, 276, 311 through 313.

Final consideration, Trans. 2671, 2672.

Text as adopted, Vol. II 1100.

Section 7. Nondiscrimination in education. No religious or partisan test or qualification shall be required of any teacher or student as a condition of admission into any public educational institution. Attendance shall not be required at any religious service. No sectarian tenets shall be advocated in any public educational institution of the state. No person shall be refused admission to any public educational institution on account of sex, race, creed, religion, political beliefs, or national origin.

Cross-References

Equal protection, Art. II, sec. 4, Mont. Const.

Freedom of religion, Art. II, sec. 5, Mont. Const.

Aid to sectarian schools prohibited, Art. X, sec. 6, Mont. Const.

Religious instruction released time program, 20-1-308.

Teachers, superintendents, and principals, Title 20, ch. 4.

Attendance of Indian children, 20-5-108.

Religious exemption for immunization requirements, 20-5-405.

Sectarian publications prohibited — prayer permitted in public schools, 20-7-112.

University System to instruct men and women equally, 20-25-101.

Freedom from discrimination, 49-1-102.

Discrimination in education prohibited, 49-2-307.

Discrimination in educational, counseling, and vocational guidance programs prohibited, 49-3-203.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2939, 2940.

Committee report, Vol. II 719, 730, 731, 994, 997, 998, 1002, 1004, 1070.

Cross-references, 1889 and 1972 Constitutions, Vol. II 757.

Debate — committee report, Trans. 2031 through 2045.

Debate — style and drafting report, Trans. 2576, 2928.

Final consideration, Trans. 2672 through 2674.

Text as adopted, Vol. II 1100.

Section 8. School district trustees. The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.

Cross-References

Filing of audit report and financial report, 2-7-514.

Consent of trustees to appointment of District Superintendent as Municipal Superintendent, 7-3-1348.

Management of school money, Title 7, ch. 6, part 28.

Education, Title 20.

School district trustees generally, Title 20, ch. 3, part 3.

Attachment of property under control of trustees, 27-18-406.

Governmental code of fair practices — application to school districts, 49-3-102.

Issuance of coal mining permit to trustees, 77-3-321.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2939, 2940.

Committee report, Vol. II 719, 731, 735, 994, 998, 1002, 1004, 1070.

Cross-references, 1889 and 1972 Constitutions, Vol. II 757.

Debate — committee report, Trans. 1971, 1977, 2046 through 2048, 2050, 2060 through 2062, 2103, 2165.

Debate — style and drafting report, Trans. 2576, 2928.

Delegate proposals, Vol. I 122, 340.

Final consideration, Trans. 2674, 2675.

Text as adopted, Vol. II 1100.

Section 9. Boards of education. (1) There is a state board of education composed of the board of regents of higher education and the board of public education. It is responsible for long-range planning, and for coordinating and evaluating policies and programs for the state's educational systems. It shall submit unified budget requests. A tie vote at any meeting may be broken by the governor, who is an ex officio member of each component board.

(2) (a) The government and control of the Montana university system is vested in a board of regents of higher education which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system and shall supervise and coordinate other public educational institutions assigned by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms, as provided by law. The governor and superintendent of public instruction are ex officio non-voting members of the board.

(c) The board shall appoint a commissioner of higher education and prescribe his term and duties.

(d) The funds and appropriations under the control of the board of regents are subject to the same audit provisions as are all other state funds.

(3) (a) There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms as provided by law. The governor, commissioner of higher education and state superintendent of public instruction shall be ex officio non-voting members of the board.

Cross-References

Governor and Superintendent of Public Instruction as executive officers, Art. VI, sec. 1, Mont. Const.

Board of Regents exempt from Montana Administrative Procedure Act, 2-4-102.

Governor as member of State Board of Education, 2-15-201.

Superintendent of Public Instruction, 2-15-701; Title 20, ch. 3, part 1.

State Board of Education, 2-15-1501.

Board of Regents, 2-15-1505.

Commissioner of Higher Education, 2-15-1506.

Board of Public Education, 2-15-1507.

Appointments to Boards, 2-15-1508.

Agencies allocated to State Board of Education, 2-15-1511.

Application of portions of state employee classification requirements to Board of Regents and Board of Public Education, 2-18-103.

Approval of gubernatorial appointments, Title 5, ch. 5, part 3.

The Legislative Audit Act, Title 5, ch. 13.

Submission of University System budget, 17-7-112.

Construction of buildings by Board of Regents without legislative approval, 18-2-102.

University System buildings exempt from certain preconstruction requirements, 18-2-103.

Education, Title 20.

State boards and commissions generally, Title 20, ch. 2.

University System, Title 20, ch. 25.

Charges for tuition — waivers, 20-25-421.

Board of Regents may contract with local governments for establishment and operation of joint library services, 22-1-403.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2939, 2940.

Committee report, Vol. II 719, 720, 731 through 740, 994, 995, 998, 999, 1002, 1004, 1005, 1070, 1071.

Cross-references, 1889 and 1972 Constitutions, Vol. II 757.

Debate — committee report, Trans. 858, 862, 864, 873, 2046, 2049 through 2091, 2096 through 2142, 2159 through 2174, 2894.

Debate — style and drafting report, Trans. 2576 through 2593, 2928.

Delegate proposals, Vol. I 196, 197, 230, 256, 282, 283, 287, 324.

Final consideration, Trans. 2675, 2676.

Text as adopted, Vol. II 1100.

Section 10. State university funds. The funds of the Montana university system and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be provided by law, and shall be guaranteed by the state against loss or diversion. The interest from such invested funds, together with the rent from leased lands or properties, shall be devoted to the maintenance and perpetuation of the respective institutions.

Cross-References

The Legislative Audit Act, Title 5, ch. 13.

University funds within treasury, 17-2-102.

Fiscal year and financial reports of university units, 17-2-110.

Endowments to University System, Title 17, ch. 3, part 10.

University funds as separate investment fund, 17-6-203.

University finance, Title 20, ch. 25, part 4.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2939, 2940.

Committee report, Vol. II 720, 740, 995, 999, 1002, 1005, 1071.

Cross-references, 1889 and 1972 Constitutions, Vol. II 757.

Debate — committee report, Trans. 2056, 2142.

Debate — style and drafting report, Trans. 2593, 2594, 2928.

Delegate proposals, Vol. I 170, 196, 197, 283.

Final consideration, Trans. 2676, 2677.

Text as adopted, Vol. II 1100, 1101.

Section 11. Public land trust, disposition. (1) All lands of the state that have been or may be granted by congress, or acquired by gift or grant or devise from any person or corporation, shall be public lands of the state. They shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised.

(2) No such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

(3) No land which the state holds by grant from the United States which prescribes the manner of disposal and minimum price shall be disposed of except in the manner and for at least the price prescribed without the consent of the United States.

(4) All public land shall be classified by the board of land commissioners in a manner provided by law. Any public land may be exchanged for other land, public or private, which is equal in value and, as closely as possible, equal in area.

Cross-References

Board of Land Commissioners, Art. X, sec. 4, Mont. Const.

State Lands, Title 77.

Exchanges of state land, Title 77, ch. 2, part 2.

Sales of state land, Title 77, ch. 2, part 3.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2939, 2940.

Committee report, Vol. II 748 through 752, 1000 through 1002, 1006, 1071, 1072.

Cross-references, 1889 and 1972 Constitutions, Vol. II 757.

Debate — committee report, Trans. 2142 through 2150.

Debate — style and drafting report, Trans. 2593, 2594, 2928.

Delegate proposals, Vol. I 266, 267, 329.

Final consideration, Trans. 2677, 2678.

Text as adopted, Vol. II 1101.

ARTICLE XI

LOCAL GOVERNMENT

Section

1. Definition.
2. Counties.
3. Forms of government.
4. General powers.
5. Self-government charters.
6. Self-government powers.
7. Intergovernmental cooperation.
8. Initiative and referendum.
9. Voter review of local government.

Article Cross-References

Sovereign immunity abolished — exceptions, Art. II, sec. 18, Mont. Const.; Title 2, ch. 9.

District Court jurisdiction, Art. VII, sec. 4, Mont. Const.

Justices of the Peace, Art. VII, sec. 5, Mont. Const.

Judicial districts, Art. VII, sec. 6, Mont. Const.

Taxing jurisdictions to use valuation established by state, Art. VIII, sec. 4, Mont. Const.

Review of tax grievances at local level required, Art. VIII, sec. 7, Mont. Const.

Local government debt, Art. VIII, sec. 10, Mont. Const.

Use of loan proceeds by local government unit, Art. VIII, sec. 11, Mont. Const.

Strict accountability of local government finances, Art. VIII, sec. 12, Mont. Const.

Investment of local government funds, Art. VIII, sec. 13, Mont. Const.; 17-6-204.

Code of ethics for local officers and employees, Art. XIII, sec. 4, Mont. Const.; Title 2, ch. 2.

Statutes imposing new local government duties to include means of funding, 1-2-112.

State agencies not to shift cost to local governments, 1-2-116.

Public participation in governmental operations, Title 2, ch. 3.

Audits of political subdivisions, Title 2, ch. 7, part 5.

Montana Recall Act, Title 2, ch. 16, part 6.

Group insurance for local government employees, 2-18-702.

District Courts, Title 3, ch. 5.

Municipal Courts, Title 3, ch. 6.

Justices' Courts, Title 3, ch. 10.

City Courts, Title 3, ch. 11.

Local Government, Title 7.

Disaster and emergency services, Title 10, ch. 3.

Elections, Title 13.

Taxation, Title 15.

Bond issues, Title 17, ch. 5.

Public Retirement Systems, Title 19.

Education, Title 20.

Public libraries, Title 22, ch. 1.

Authority of local governments to regulate gambling, 23-5-171.

Local government ordinances on obscenity, 45-8-201.

Discrimination by political subdivisions prohibited, 49-2-308.

Governmental code of fair practices, Title 49, ch. 3.

Local Boards of Health, Title 50, ch. 2.

Land Resources and Use, Title 76.

Lease of local government land for oil and gas development, Title 82, ch. 10, part 2.

Coal development impact on local governments — grants, Title 90, ch. 6, part 2.

Section 1. Definition. The term "local government units" includes, but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

Cross-References

Montana Recall Act — political subdivision defined, 2-16-602.

Nature of counties, 7-1-2101.

Nature of municipalities, 7-1-4101.

City-county consolidation, Title 7, ch. 3, parts 11 through 13.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2940 through 2942.

Committee report, Vol. II 782, 785, 786, 1009, 1012, 1073.

Debate — committee report, Trans. 2513, 2514, 2537.

Debate — style and drafting report, Trans. 2816, 2928.

Delegate proposals, Vol. I 135, 215, 253.

Final consideration, Trans. 2832, 2833.

Text as adopted, Vol. II 1101.

Section 2. Counties. The counties of the state are those that exist on the date of ratification of this constitution. No county boundary may be changed or county seat transferred until approved by a majority of those voting on the question in each county affected.

Cross-References

Description of boundaries of new counties included in session laws, 5-11-207.

Counties generally, Title 7, ch. 1, part 21.

Creation, alteration, and abandonment of counties, Title 7, ch. 2, parts 1 and 21 through 27.

County boundary changes, Title 7, ch. 2, part 22.

Alternate forms of county government, Title 7, ch. 3.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2940 through 2942.

Committee report, Vol. II 782, 785 through 788, 1009, 1012, 1015, 1073.

Cross-references, 1889 and 1972 Constitutions, Vol. II 802.

Debate — committee report, Trans. 2514 through 2516.

Debate — style and drafting report, Trans. 2816, 2928.

Delegate proposals, Vol. I 153, 160, 163, 201, 202, 215.

Final consideration, Trans. 2833, 2834.

Text as adopted, Vol. II 1101.

Section 3. Forms of government. (1) The legislature shall provide methods for governing local government units and procedures for incorporating, classifying, merging, consolidating, and dissolving such units, and altering their boundaries. The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question.

(2) One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator. The terms, qualifications, duties, and compensation of those offices shall be provided by law. The Board of county commissioners may consolidate two or more such offices. The Boards of two or more counties may provide for a joint office and for the election of one official to perform the duties of any such office in those counties.

Cross-References

Self-government charters, Art. XI, sec. 5, Mont. Const.

Voter review of local government, Art. XI, sec. 9, Mont. Const.

Alternative forms for local governments, Title 7, ch. 3, parts 1 through 7.

County officers, Title 7, ch. 4.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2940 through 2942.

Committee report, Vol. II 525, 780, 782, 785, 788 through 791, 1009, 1012, 1015, 1073.

Cross-references, 1889 and 1972 Constitutions, Vol. II 802.

Debate — committee report, Trans. 1129 through 1131, 1154 through 1158, 2512, 2513, 2516 through 2521, 2529.

Debate — style and drafting report, Trans. 2816, 2817, 2928.

Delegate proposals, Vol. I 80, 81, 92, 93, 102 through 104, 135, 136, 215, 216, 234, 253, 300, 301, 314.

Final consideration, Trans. 2834, 2835.

Text as adopted, Vol. II 1101.

Section 4. General powers. (1) A local government unit without self-government powers has the following general powers:

(a) An incorporated city or town has the powers of a municipal corporation and legislative, administrative, and other powers provided or implied by law.

(b) A county has legislative, administrative, and other powers provided or implied by law.

(c) Other local government units have powers provided by law.

(2) The powers of incorporated cities and towns and counties shall be liberally construed.

Cross-References

Self-government charters, Art. XI, sec. 5, Mont. Const.

Self-government powers, Art. XI, sec. 6, Mont. Const.

Local Government, Title 7.

Municipal Finance Consolidation Act, Title 17, ch. 5, part 16.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2940 through 2942.

Committee report, Vol. II 581, 780, 782, 783, 791 through 795, 1009, 1010, 1012, 1013, 1015, 1073.

Debate — committee report, Trans. 2521 through 2524, 2530.

Debate — style and drafting report, Trans. 2817, 2928.

Delegate proposals, Vol. I 136, 155, 156, 215, 216, 253, 314.

Final consideration, Trans. 2835, 2836.

Text as adopted, Vol. II 1101.

Section 5. Self-government charters. (1) The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body.

(2) If the legislature does not provide such procedures by July 1, 1975, they may be established by election either:

(a) Initiated by petition in the local government unit or combination of units; or

(b) Called by the governing body of the local government unit or combination of units.

(3) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

Cross-References

Self-government powers, Art. XI, sec. 6, Mont. Const.

Local government initiative and referendum, Art. XI, sec. 8, Mont. Const.

Nature of self-government local governments, Title 7, ch. 1, part 1.

Charter form, Title 7, ch. 3, part 7.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2940 through 2942.

Committee report, Vol. II 783, 795, 796, 1010, 1013, 1015, 1074.

Debate — committee report, Trans. 1512, 2512, 2524 through 2530, 2532, 2535.

Debate — style and drafting report, Trans. 2817, 2818, 2928.

Delegate proposals, Vol. I 82, 83, 136, 155, 156, 216, 219, 253, 254.

Final consideration, Trans. 2836 through 2838.

Text as adopted, Vol. II 1101, 1102.

Section 6. Self-government powers. A local government unit adopting a self-government charter may exercise any power not prohibited by this constitution, law, or charter. This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

Cross-References

Self-government charters, Art. XI, sec. 5, Mont. Const.

Nature of self-government local governments, Title 7, ch. 1, part 1.

Charter form, Title 7, ch. 3, part 7.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2940 through 2942.

Committee report, Vol. II 783, 785, 796 through 798, 1010, 1013, 1015, 1074.

Debate — committee report, Trans. 2512, 2524, 2528 through 2534, 2548, 2609, 2610.

Debate — style and drafting report, Trans. 2818, 2928.

Delegate proposals, Vol. I 136, 155, 156, 216, 254.

Final consideration, Trans. 2838, 2839.

Text as adopted, Vol. II 1102.

Section 7. Intergovernmental cooperation. (1) Unless prohibited by law or charter, a local government unit may

(a) cooperate in the exercise of any function, power, or responsibility with,

(b) share the services of any officer or facilities with,

(c) transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state, or the United States.

(2) The qualified electors of a local government unit may, by initiative or referendum, require it to do so.

Cross-References

Local government initiative and referendum, Art. XI, sec. 8, Mont. Const.; Title 7, ch. 5, part 1.

Intercounty consolidation of offices, 7-4-2303.

Collection of municipal taxes by county — tax sales, 7-6-4413, 7-6-4414, 7-6-4421 through 7-6-4423.

Joint city-county buildings, Title 7, ch. 8, part 2.

Interlocal Cooperation Act, Title 7, ch. 11, part 1.

Interlocal Cooperation Commission, Title 7, ch. 11, part 2.

Multijurisdictional service districts, Title 7, ch. 11, part 11.

Disaster and emergency services — intergovernmental cooperation, Title 10, ch. 3, part 2.

State-Tribal Cooperative Agreements Act, Title 18, ch. 11, part 1.

Educational cooperative agreements, Title 20, ch. 9, part 7.

Cooperation in library services, 22-1-315 through 22-1-317.

Mutual assistance of peace officers, Title 44, ch. 11, part 1.

Local Boards of Health, Title 50, ch. 2.

Maintenance agreements between local governments and Department of Transportation, 60-2-204.

Local air pollution control programs, Title 75, ch. 2, part 3.

Local government participation under Montana Major Facility Siting Act, 75-20-211.

Land Resources and Use, Title 76.

Cooperation with state during energy emergency, 90-4-311.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2940 through 2942.

Committee report, Vol. II 783, 798, 799, 1010, 1013 through 1015, 1074.

Debate — committee report, Trans. 2526, 2534 through 2536.

Debate — style and drafting report, Trans. 2818, 2819, 2928.

Delegate proposals, Vol. I 153, 136, 156, 254.

Final consideration, Trans. 2839, 2840.

Text as adopted, Vol. II 1102.

Section 8. Initiative and referendum. The legislature shall extend the initiative and referendum powers reserved to the people by the constitution to the qualified electors of each local government unit.

Cross-References

Initiative, Art. III, sec. 4, Mont. Const.

Referendum, Art. III, sec. 5, Mont. Const.

Amendment of self-government charter or adopted alternate form of government by initiative or referendum, 7-3-103.

Alteration of existing form of local government, 7-3-121 through 7-3-125, 7-3-141 through 7-3-161.

Petition for city-county government consolidation, 7-3-1204.

Local government initiatives and referendums, Title 7, ch. 5, part 1.

Form of petition calling for election on question of issuing county bonds, 7-7-2224.

Form of petition for creation of urban transportation district, 7-14-204.

Ballot issues, Title 13, ch. 27.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2940 through 2942.

Committee report, Vol. II 783, 785, 799, 1010, 1014, 1074.

Debate — committee report, Trans. 2512, 2520, 2548, 2549.

Debate — style and drafting report, Trans. 2819, 2928.

Delegate proposals, Vol. I 138, 216, 254.

Final consideration, Trans. 2840, 2841.

Text as adopted, Vol. II 1102.

Section 9. Voter review of local government. (1) The legislature shall, within four years of the ratification of this constitution, provide procedures requiring each local government unit or combination of units to review its structure and submit one alternative form of government to the qualified electors at the next general or special election.

(2) The legislature shall require an election in each local government to determine whether a local government will undertake a review procedure once every ten years after the first election. Approval by a majority of those voting in the decennial general election on the question of undertaking a local government review is necessary to mandate the election of a local government study commission. Study commission members shall be elected during any regularly scheduled election in local governments mandating their election.

Cross-References

Legislature to provide alternate forms of local government, Art. XI, sec. 3, Mont. Const.

Self-government charters, Art. XI, sec. 5, Mont. Const.

Alternate forms of local government, Title 7, ch. 3.

Procedure for alteration of existing forms of local government, 7-3-121 through 7-3-125, 7-3-141 through 7-3-161.

Local government review — study commissions, 7-3-171 through 7-3-193.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2940 through 2942.

Committee report, Vol. II 784, 785, 800, 801, 1010, 1011, 1014, 1015, 1074, 1075.

Debate — committee report, Trans. 2512, 2513, 2555 through 2565.

Debate — style and drafting report, Trans. 2819, 2928.

Delegate proposals, Vol. I 217, 234.

Final consideration, Trans. 2841, 2842.

Text as adopted, Vol. II 1102.

ARTICLE XII

DEPARTMENTS AND INSTITUTIONS

Section
1. Agriculture.
2. Labor.
3. Institutions and assistance.

Article Cross-References

General government, Art. III, Mont. Const.

Legislative Branch, Art. V, Mont. Const.; Title 5.

Executive Branch, Art. VI, Mont. Const.

Twenty principal departments, Art. VI, sec. 7, Mont. Const.

Standards of conduct for public employees, Title 2, ch. 2.

Public participation in governmental operations, Title 2, ch. 3.

Montana Administrative Procedure Act, Title 2, ch. 4.

Legislative review of need for and performance of state agencies, Title 2, ch. 8, part 1.

Executive Branch officers and agencies, Title 2, ch. 15.

Termination of state agencies, Title 2, ch. 19, part 1.

Section 1. Agriculture. (1) The legislature shall provide for a Department of Agriculture and enact laws and provide appropriations to protect, enhance, and develop all agriculture.

(2) Special levies may be made on livestock and on agricultural commodities for disease control and indemnification, predator control, and livestock and commodity inspection, protection, research, and promotion. Revenue derived shall be used solely for the purposes of the levies.

Cross-References

Workday for agriculture and stockraising, Art. XII, sec. 2, Mont. Const.

Department of Agriculture created — head, 2-15-3001; Title 80, ch. 1.

Montana Wheat and Barley Committee, 2-15-3002.

Board of Hail Insurance, 2-15-3003.

Montana Alfalfa Seed Committee, 2-15-3004.

Montana Mint Committee, 2-15-3006.

Montana Agriculture Development Council, 2-15-3015.

Department of Livestock, 2-15-3101.

Board of Livestock, 2-15-3102.

Department of Natural Resources and Conservation, Title 2, ch. 15, part 33.

Rangeland Resources Committee, 2-15-3304, 2-15-3305.

Department of Fish, Wildlife, and Parks, Title 2, ch. 15, part 34.

County agricultural and livestock services, Title 7, ch. 21, part 32.

Public markets, Title 7, ch. 21, part 33.

County fairs, Title 7, ch. 21, part 34.

Local government weed and pest control, Title 7, ch. 22.

Municipal control over animals running at large, 7-23-4101.

Agricultural land as class three property for property tax purposes, 15-6-133.

Taxation of livestock and agricultural products, 15-6-136; Title 15, ch. 24, part 9.

Property of agricultural and horticultural societies and irrigation districts exempt from property taxation, 15-6-201.

Irrigation and drainage facilities exempt from property taxation, 15-6-206.

Certain agricultural products exempt from taxation, 15-6-207.

Greenbelt appraisal of land for property tax purposes, Title 15, ch. 7, part 2.

Exemption from corporation license or income tax for certain agricultural organizations, 15-31-102.

Montana State University - Bozeman — professional agricultural program, 20-25-221.

Agricultural experiment station, research centers, experimental farms, wool laboratory, and grain and seed laboratory, 20-25-222 through 20-25-232.

Harassment of livestock from snowmobile prohibited, 23-2-633.

Injunction against price fixing or regulation of product of the soil, 27-19-202.

Commission merchants, Title 30, ch. 11, part 4.

Cooperative associations, Title 35, ch. 15.

Agricultural associations, Title 35, ch. 16.

Cooperative agricultural marketing, Title 35, ch. 17.

Criminal mischief, 45-6-101.

Cruelty to animals, 45-8-211.

Harassment of livestock by aircraft prohibited, 67-1-204.

Environmental Protection, Title 75.

Land Resources and Use, Title 76.

State Lands, Title 77.

Agriculture, Title 80.

Livestock, Title 81.

Levy on cattle — Livestock Protective Committee, 81-6-104.

Levy on cattle — cattle protective districts, 81-6-204, 81-6-209.

State levy on livestock for predator control, 81-7-104, 81-7-118.

County levy on livestock for predator control, 81-7-201.

County levy on sheep for predator control, 81-7-303.

County levy for livestock shows and sales, 81-8-504.

Water Use, Title 85.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2942, 2943.

Committee report, Vol. II 550, 559, 560, 581, 586, 597, 598, 936 through 938, 941, 1076.

Cross-references, 1889 and 1972 Constitutions, Vol. II 563.

Debate — committee report, Trans. 1199, 1363 through 1370, 1378, 1547.

Debate — style and drafting report, Trans. 2214 through 2217, 2928, 2929.

Delegate proposals, Vol. I 244, 246.

Final consideration, Trans. 2458 through 2460.

Text as adopted, Vol. II 1102.

Section 2. Labor. (1) The legislature shall provide for a Department of Labor and Industry, headed by a Commissioner appointed by the governor and confirmed by the senate.

(2) A maximum period of 8 hours is a regular day's work in all industries and employment except agriculture and stock raising. The legislature may change this maximum period to promote the general welfare.

Cross-References

Department of Labor and Industry, Title 2, ch. 15, part 17; Title 39, ch. 1.

Workers' Compensation Judge allocated to Department of Administration, 2-15-1707.

Senate confirmation of gubernatorial appointments, Title 5, ch. 5, part 3.

Employment and members of organized militia, 10-1-603, 10-1-604.

Disaster and emergency services law not to interfere with labor dispute, 10-3-102.

Injunctions in labor disputes, 27-19-103.

Labor, Title 39.

Hours of labor in certain employments, Title 39, ch. 4.

Child labor, Title 41, ch. 2.

Highway patrol authority over labor disputes prohibited, 44-1-1002.

Discrimination in employment prohibited, 49-1-102, 49-2-303, 49-3-201, 49-4-101.

Occupational Health Act of Montana, Title 50, ch. 70, part 1.

Montana Safety Act, Title 50, ch. 71.

Safety in mines other than coal mines, Title 50, ch. 72.

Safety in coal mines, Title 50, ch. 73.

Safety in construction and operation of boilers and steam engines, Title 50, ch. 74.

Safety in operation of hoisting engines, Title 50, ch. 76.

Construction site health and safety, Title 50, ch. 77.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2942, 2943.

Committee report, Vol. II 670 through 673, 978, 982, 985, 987, 1076, 1107.

Cross-references, 1889 and 1972 Constitutions, Vol. II 699.

Debate — committee report, Trans. 2308 through 2328, 2333, 2340 through 2342, 2369 through 2372, 2601 through 2604.

Debate — style and drafting report, Trans. 2596, 2928, 2929.

Delegate proposal, Vol. I 220.

Final consideration, Trans. 2682 through 2684.

Text as adopted, Vol. II 1102.

Section 3. Institutions and assistance. (1) The state shall establish and support institutions and facilities as the public good may require, including homes which may be necessary and desirable for the care of veterans.

(2) Persons committed to any such institutions shall retain all rights except those necessarily suspended as a condition of commitment. Suspended rights are restored upon termination of the state's responsibility.

(3) The legislature may provide such economic assistance and social and rehabilitative services for those who, by reason of age, infirmities, or misfortune are determined by the legislature to be in need.

(4) The legislature may set eligibility criteria for programs and services, as well as for the duration and level of benefits and services.

Cross-References

Declaration of rights, Art. II, Mont. Const.

Restoration of rights of convicted upon termination of state supervision, Art. II, sec. 28, Mont. Const.

Department of Public Health and Human Services, Title 2, ch. 15, part 22.

The Legislative Finance Act, Title 5, ch. 12.

County housing authorities, Title 7, ch. 15, part 21.

Municipal housing authorities, Title 7, ch. 15, parts 44 and 45.

Local government medical services and boarding homes for the aged, Title 7, ch. 34.

Montana Veterans' Homes, Title 10, ch. 2, part 4.

Property tax classification of residences of certain persons over 62 years of age, 15-6-134.

Tax exemption of property of institutions of purely public charity, 15-6-201.

Property tax exemption of community service building, 15-6-209.

Organizations not organized for profit but to promote social welfare exempt from corporation license tax, 15-31-102.

Allocation of liquor license tax, 16-1-404.

Allocation of tax on wine, 16-1-411.

Contingent revolving accounts for state institutions, 17-2-201.

Endowments to state institutions, Title 17, ch. 3, part 10.

State Treasurer as treasurer of institutions, 17-6-105.

Bids required on work or contracts for institutions, 18-2-301.

Department of Administration to supervise procurement of goods and services for institutions, Title 18, ch. 4.

Sale of surplus property of institution, Title 18, ch. 6, part 1.

Exclusion from public retirement systems of inmates and patients, 19-3-403.

Assistance to incapacitated or indigent child to enable school attendance, 20-5-107.

Special education for exceptional children, Title 20, ch. 7, part 4.

Cooperation of state agencies in discovering children in need of special education, 20-7-404.

Out-of-state tuition for special education, 20-7-422.

Montana State School for the Deaf and Blind, Title 20, ch. 8.

Food service in state institutional schools, 20-10-206.

Research programs between University System and institutions, 20-25-108.

University fee waiver for students 62 years of age, 20-25-421.

Custodial care under Montana Youth Court Act, Title 41, ch. 5, part 18.

Criminal Justice Information Act of 1979, Title 44, ch. 5, part 1.

Mistreating prisoners, 45-5-204.

Custodial interference, 45-5-304.

Transfer of illegal articles or unauthorized communication to person subject to detention, 45-7-307.

Human Rights, Title 49.

Social Services and Institutions, Title 53.

Relationship of foster homes, boarding homes, and community residential facilities to zoning, 76-2-315, 76-2-411, 76-2-412.

Meat from animals destroyed for damaging property or confiscated — delivery to state institutions, 87-1-226, 87-1-512.

Residents of certain institutions and disabled persons allowed to fish without license, 87-2-802, 87-2-803.

Home weatherization programs for persons on low and fixed incomes, Title 90, ch. 4, part 2.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2942, 2943.

Committee report, Vol. I 339, 453; Vol. II 627, 674, 675, 979, 983, 985, 988, 1076.

Cross-references, 1889 and 1972 Constitutions, Vol. II 699.

Debate — committee report, Trans. 2270 through 2300, 2304 through 2308.

Debate — style and drafting report, Trans. 2596 through 2598, 2928, 2929.

Delegate proposals, Vol. I 105, 114, 273, 297, 310.

Final consideration, Trans. 2684 through 2687.

Text as adopted, Vol. II 1102.

Cross-References

Declaration of rights, Art. II, Mont. Const.

Restoration of rights of convicted upon termination of state supervision, Art. II, sec. 28, Mont. Const.

Department of Public Health and Human Services, Title 2, ch. 15, part 22.

The Legislative Finance Act, Title 5, ch. 12.

County housing authorities, Title 7, ch. 15, part 21.

Municipal housing authorities, Title 7, ch. 15, parts 44 and 45.

Local government medical services and boarding homes for the aged, Title 7, ch. 34.

Montana Veterans' Homes, Title 10, ch. 2, part 4.

Property tax classification of residences of certain persons over 62 years of age, 15-6-134.

Tax exemption of property of institutions of purely public charity, 15-6-201.

Property tax exemption of community service building, 15-6-209.

Organizations not organized for profit but to promote social welfare exempt from corporation license tax, 15-31-102.

Allocation of liquor license tax, 16-1-404.

Allocation of tax on wine, 16-1-411.

Contingent revolving accounts for state institutions, 17-2-201.

Endowments to state institutions, Title 17, ch. 3, part 10.

State Treasurer as treasurer of institutions, 17-6-105.

Bids required on work or contracts for institutions, 18-2-301.

Department of Administration to supervise procurement of goods and services for institutions, Title 18, ch. 4.

Sale of surplus property of institution, Title 18, ch. 6, part 1.

Exclusion from public retirement systems of inmates and patients, 19-3-403.

Assistance to incapacitated or indigent child to enable school attendance, 20-5-107.

Special education for exceptional children, Title 20, ch. 7, part 4.

Cooperation of state agencies in discovering children in need of special education, 20-7-404.

Out-of-state tuition for special education, 20-7-422.

Montana State School for the Deaf and Blind, Title 20, ch. 8.

Food service in state institutional schools, 20-10-206.

Research programs between University System and institutions, 20-25-108.

University fee waiver for students 62 years of age, 20-25-421.

Custodial care under Montana Youth Court Act, Title 41, ch. 5, part 8.

Criminal Justice Information Act of 1979, Title 44, ch. 5, part 1.

Mistreating prisoners, 45-5-204.

Custodial interference, 45-5-304.

Transfer of illegal articles or unauthorized communication to person subject to detention, 45-7-307.

Human Rights, Title 49.

Social Services and Institutions, Title 53.

Relationship of foster homes, boarding homes, and community residential facilities to zoning, 76-2-315, 76-2-411, 76-2-412.

Meat from animals destroyed for damaging property or confiscated — delivery to state institutions, 87-1-226, 87-1-512.

Residents of certain institutions and disabled persons allowed to fish without license, 87-2-802, 87-2-803.

Home weatherization programs for persons on low and fixed incomes, Title 90, ch. 4, part 2.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2942, 2943.

Committee report, Vol. I 339, 453; Vol. II 627, 674, 675, 979, 983, 985, 988, 1076.

Cross-references, 1889 and 1972 Constitutions, Vol. II 699.

Debate — committee report, Trans. 227 through 2300, 2304 through 2308.

Debate — style and drafting report, Trans 2596 through 2598, 2928, 2929.

Delegate proposals, Vol. I 105, 114, 273 297, 310.

Final consideration, Trans. 2684 throug 2687.

Text as adopted, Vol. II 1102.

ARTICLE XIII

GENERAL PROVISIONS

Section
1. Nonmunicipal corporations.
2. Consumer counsel.
3. Repealed.
4. Code of ethics.
5. Exemption laws.
6. Perpetuities.

Section 1. Nonmunicipal corporations. (1) Corporate charters shall be granted, modified, or dissolved only pursuant to general law.

(2) The legislature shall provide protection and education for the people against harmful and unfair practices by either foreign or domestic corporations, individuals, or associations.

(3) The legislature shall pass no law retrospective in its operations which imposes on the people a new liability in respect to transactions or considerations already passed.

Cross-References

Ex post facto, impairment of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.

Local and special legislation, Art. V, sec. 12, Mont. Const.

Local government, Art. XI, Mont. Const.

Consumer Counsel, Art. XIII, sec. 2, Mont. Const.

When laws retroactive, 1-2-109.

Effect of corporate instruments without seal, 1-4-205.

Authority of notary public who is stockholder, officer, or employee of corporation, 1-5-417.

Governor may require inquiry into affairs or management of any corporation, 2-15-201.

Legislative Consumer Committee — Consumer Counsel, Title 5, ch. 15.

Certain political contributions from corporations prohibited, 13-35-227, 13-35-228.

Corporation license or income tax, Title 15, ch. 31.

Violation of Montana Alcoholic Beverage Code by corporation, 16-6-310.

Fire department relief associations, 19-18-102.

Actions against business association, 25-5-104.

Redemption of real property by shareholder, 25-13-801, 25-13-804.

Service of process upon corporation, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Statute of limitations for actions against stockholders or board of directors of corporation, 27-2-211, 27-2-401.

Corporate shares subject to attachment, 27-18-402, 27-18-409 through 27-18-411.

Quo warranto proceedings, Title 27, ch. 28.

Contracts, Title 28.

Trade and Commerce, Title 30.

Securities regulation, Title 30, ch. 10.

Assumed business names, trademarks, and related rights, Title 30, ch. 13.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Credit Transactions and Relationships, Title 31.

Assignment for benefit of creditors, 31-2-201.

Financial Institutions, Title 32.

Montana Consumer Loan Act, Title 32, ch. 5.

Insurance companies, Title 33.

Health service corporations, Title 33, ch. 30.

Corporations, Partnerships, and Associations, Title 35.

Criminal responsibility of corporations and members of corporations, 45-2-311, 45-2-312.

Discrimination prohibited generally, Title 49.

Consumer Product Safety Act of 1975, Title 50, ch. 30.

Public Utilities and Carriers, Title 69.

Notice of filing of federal tax lien against corporation, 71-3-204.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2943, 2944.

Committee report, Vol. II 666 through 669, 710 through 712, 977, 981, 985, 986, 1077.

Cross-references, 1889 and 1972 Constitutions, Vol. II 698, 699, 710 through 712.

Debate — committee report, Trans. 2247 through 2269, 2398, 2924, 2925.

Debate — style and drafting report, Trans. 2595, 2929.

Delegate proposal, Vol. I 172.

Final consideration, Trans. 2678 through 2682.

Text as adopted, Vol. II 1103.

Section 2. Consumer counsel. The legislature shall provide for an office of consumer counsel which shall have the duty of representing consumer interests in hearings before the public service commission or any other successor agency. The legislature shall provide for the funding of the office of consumer counsel by a special tax on the net income or gross revenues of regulated companies.

Cross-References

Legislative Consumer Committee — Consumer Counsel, Title 5, ch. 15; Title 69, ch. 1, part 2.

Application for preliminary injunction by Consumer Counsel, 27-19-203.

Role of Consumer Counsel, Title 69, ch. 2, part 2.

Advice of consumers under energy emergency law, 90-4-306.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2943, 2944.

Committee report, Vol. II 980, 984, 989, 1077.

Debate — committee report, Trans. 2400 through 2404.

Debate — style and drafting report, Trans. 2598 through 2601, 2929.

Final consideration, Trans. 2687, 2689.

Text as adopted, Vol. II 1103.

Section 3. Repealed. Sec. 1, Const. Amend. No. 16, 1986.

Section 4. Code of ethics. The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees.

Cross-References

Standards of conduct generally, Title 2, ch. 2.

Code of ethics, Title 2, ch. 2, part 1.

Election and campaign practices and criminal provisions, Title 13, ch. 35.

Bribery and corrupt influence, Title 45, ch. 7, part 1.

Tampering with public records or information as criminal offense, 45-7-208.

Official misconduct, 45-7-401.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2943, 2944.

Committee report, Vol. II 866, 873, 875, 879, 884, 889, 1077.

Cross-references, 1889 and 1972 Constitutions, Vol. II 793.

Debate — committee report, Trans. 793 through 797.

Debate — style and drafting report, Trans. 1594, 2923 through 2925, 2929.

Delegate proposal, Vol. I 164.

Final consideration, Trans. 1889 through 1891 [referred to as Article V (unicameral), section 17], 1908, 1909 [referred to as Article V (bicameral), section 16].

Text as adopted, Vol. II 1103.

Section 5. Exemption laws. The legislature shall enact liberal homestead and exemption laws.

Cross-References

Government property exemption, 2-9-318.

Exemption of funds and benefits of various retirement systems, 19-2-1004, 19-18-612, 19-19-504, 19-20-706.

Property subject to execution, Title 25, ch. 13, part 5.

Property exempt from execution, Title 25, ch. 13, part 6.

Redemption, Title 25, ch. 13, part 8.

Exempt property — bankruptcy proceeding, 31-2-106.

Exempt property — effect of assignment for benefit of creditors, 31-2-227.

Partnership property, 35-10-505.

Shares of cooperative association exempt, 35-15-404.

Nonliability of members of rural cooperatives, 35-18-302.

Exemption for cemetery association, 35-20-217.

Homesteads, Title 70, ch. 32.

Hail insurance benefits exempt, 80-2-245.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2943, 2944.

Committee report, Vol. I 526, 527; Vol. II 916, 921, 923, 927, 1077.

Cross-references, 1889 and 1972 Constitutions, Vol. I 530.

Debate — committee report, Trans. 1147.

Debate — style and drafting report, Trans. 2188, 2924, 2926, 2929.

Final consideration, Trans. 2447, 2448.

Text as adopted, Vol. II 1103.

Section 6. Perpetuities. No perpetuities shall be allowed except for charitable purposes.

Cross-References

Uniform statutory rule against perpetuities, Title 72, ch. 2, part 10.

Trusts, Title 72, ch. 33 through 36.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2943, 2944.

Committee report, Vol. I 526, 527; Vol. II 916, 921, 923, 927, 1077.

Cross-references, 1889 and 1972 Constitutions, Vol. I 530.

Debate — committee report, Trans. 1147, 1148.

Debate — style and drafting report, Trans. 2188, 2924, 2926, 2929.

Final consideration, Trans. 2448, 2449.

Text as adopted, Vol. II 1103.

ARTICLE XIV

CONSTITUTIONAL REVISION

Section
1. Constitutional convention.
2. Initiative for constitutional convention.
3. Periodic submission.
4. Call of convention.
5. Convention expenses.
6. Oath, vacancies.
7. Convention duties.
8. Amendment by legislative referendum.
9. Amendment by initiative.
10. Petition signers.
11. Submission.

Article Cross-References

Popular sovereignty, Art. II, sec. 1, Mont. Const.

Self-government, Art. II, sec. 2, Mont. Const.

Provisions of Article III of Montana Constitution inapplicable, Art. III, sec. 8, Mont. Const.

Elections, Art. IV, Mont. Const.; Title 13.

Secretary of State — custody of enrolled copy of constitution, 2-6-111.

Section 1. Constitutional convention. The legislature, by an affirmative vote of two-thirds of all the members, whether one or more bodies, may at any time submit to the qualified electors the question of whether there shall be an unlimited convention to revise, alter, or amend this constitution.

Cross-References

Legislature, Art. V, Mont. Const.; Title 5.

Periodic submission of question, Art. XIV, sec. 3, Mont. Const.; 13-1-121; 13-1-122.

Ballot issues, Title 13, ch. 27.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2944, 2945.

Committee report, Vol. I 352, 353, 356 through 360; Vol. II 851 through 854, 856 through 858, 1078.

Cross-references, 1889 and 1972 Constitutions, Vol. I 365.

Debate — committee report, Trans. 453 through 455, 470, 471.

Debate — style and drafting report, Trans. 1187 through 1189, 2929.

Delegate proposals, Vol. I 150, 151, 158, 209 through 211, 226, 227.

Final consideration, Trans. 1868 through 1870, 1909, 1910.

Text as adopted, Vol. II 1103.

Section 2. Initiative for constitutional convention. (1) The people may by initiative petition direct the secretary of state to submit to the qualified electors the question of whether there shall be an unlimited convention to revise, alter, or amend this constitution. The petition shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The secretary of state shall certify the filing of the petition in his office and cause the question to be submitted at the next general election.

Cross-References

Legislative districting and apportionment, Art. V, sec. 14, Mont. Const.; Title 5, ch. 1.

Petition signers, Art. XIV, sec. 10, Mont. Const.

Times for holding general elections, 13-1-104.

Qualified voter, 13-1-111.

Ballot issues generally, Title 13, ch. 27.

Form of petition for initiative for Constitutional Convention, 13-27-201, 13-27-202, 13-27-206.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2944, 2945.

Committee report, Vol. I 352, 356 through 358; Vol. II 851, 853, 856, 857, 1078.

Cross-references, 1889 and 1972 Constitutions, Vol. I 365.

Debate — committee report, Trans. 454 through 462, 471 through 476, 2698 through 2700.

Debate — style and drafting report, Trans. 1189, 2929.

Delegate proposal, Vol. I 209.

Final consideration, Trans. 1870, 1910, 1911.

Text as adopted, Vol. II 1103.

Section 3. Periodic submission. If the question of holding a convention is not otherwise submitted during any period of 20 years, it shall be submitted as provided by law at the general election in the twentieth year following the last submission.

Cross-References

Periodic submission — ballot form, 13-1-121, 13-1-122.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2944, 2945.

Committee report, Vol. I 352, 356, 358, 359; Vol. II 851, 853, 856, 857, 1078.

Cross-references, 1889 and 1972 Constitutions, Vol. I 365.

Debate — committee report, Trans. 454, 462 through 466 [referred to as section 3], 476 through 478.

Debate — style and drafting report, Trans. 1189, 1190, 2929.

Delegate proposals, Vol. I 158, 209, 210, 227.

Final consideration, Trans. 1911, 1912.

Text as adopted, Vol. II 1103.

Section 4. Call of convention. If a majority of those voting on the question answer in the affirmative, the legislature shall provide for the calling thereof at its next session. The number of delegates to the convention shall be the same as that of the larger body of the legislature. The qualifications of delegates shall be the same as the highest qualifications required for election to the legislature. The legislature shall determine whether the delegates may be nominated on a partisan or a non-partisan basis. They shall be elected at the same places and in the same districts as are the members of the legislative body determining the number of delegates.

Cross-References

Legislature, Art. V, Mont. Const.; Title 5.

Determination of result of election on ballot issue, 13-27-503.

Copy of approved issues to be sent to Legislative Services Division, 13-27-504.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2944, 2945.

Committee report, Vol. I 352, 356, 359, 360; Vol. II 851, 853, 854, 856, 857, 1078.

Cross-references, 1889 and 1972 Constitutions, Vol. I 365.

Debate — committee report, Trans. 454, 481 through 485 [referred to as section 5], 489, 490 [referred to as section 7].

Debate — style and drafting report, Trans. 1190, 1191, 2929.

Delegate proposals, Vol. I 150, 158, 210, 226, 227.

Final consideration, Trans. 1912 through 1914.

Text as adopted, Vol. II 1103.

Section 5. Convention expenses. The legislature shall, in the act calling the convention, designate the day, hour, and place of its meeting, and fix and provide for the pay of its members and officers and the necessary expenses of the convention.

Cross-References

Call of convention, Art. XIV, sec. 4, Mont. Const.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2944, 2945.

Committee report, Vol. I 353, 356, 357, 359, 360; Vol. II 851, 852, 854, 856, 857, 1078.

Cross-references, 1889 and 1972 Constitutions, Vol. I 365.

Debate — committee report, Trans. 454, 485 through 489 [referred to as section 6].

Debate — style and drafting report, Trans. 1191, 2929.

Delegate proposals, Vol. I 150, 210, 226, 227.

Final consideration, Trans. 1914, 1915.

Text as adopted, Vol. II 1103.

Section 6. Oath, vacancies. Before proceeding, the delegates shall take the oath provided in this constitution. Vacancies occurring shall be filled in the manner provided for filling vacancies in the legislature if not otherwise provided by law.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.

Vacancies in Legislature, Art. V, sec. 7, Mont. Const.; Title 5, ch. 2, part 4.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2944, 2945.

Committee report, Vol. I 353, 357, 360; Vol. II 852, 854, 856 through 858, 1078.

Cross-references, 1889 and 1972 Constitutions, Vol. I 365.

Debate — committee report, Trans. 454, 489, 490 [referred to as section 7].

Debate — style and drafting report, Trans. 1191, 2929.

Delegate proposals, Vol. I 150, 210, 226.

Final consideration, Trans. 1915, 1916.

Text as adopted, Vol. II 1104.

Section 7. Convention duties. The convention shall meet after the election of the delegates and prepare such revisions, alterations, or amendments to the constitution as may be deemed necessary. They shall be submitted to the qualified electors for ratification or rejection as a whole or in separate articles or amendments as determined by the convention at an election appointed by the convention for that purpose not less than two months after adjournment. Unless so submitted and approved by a majority of the electors voting thereon, no such revision, alteration, or amendment shall take effect.

Cross-References

Right of people to abolish or alter constitution, Art. II, sec. 2, Mont. Const.

Time and place of meeting, Art. XIV, sec. 5, Mont. Const.

Notice of special election, 13-1-108.

Qualified voter, 13-1-111.

Ballot issues, Title 13, ch. 27.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2944, 2945.

Committee report, Vol. I 353, 357, 360; Vol. II 852, 854, 856, 858, 1078, 1079.

Cross-references, 1889 and 1972 Constitutions, Vol. I 365.

Debate — committee report, Trans. 454, 490, 491, 526 through 528 [referred to as section 8].

Debate — style and drafting report, Trans. 1191, 1192, 2929.

Delegate proposals, Vol. I 150, 151, 210, 226, 227.

Final consideration, Trans. 1916, 1917.

Text as adopted, Vol. II 1104.

Section 8. Amendment by legislative referendum. Amendments to this constitution may be proposed by any member of the legislature. If adopted by an affirmative roll call vote of two-thirds of all the members thereof, whether one or more bodies, the proposed amendment shall be submitted to the qualified electors at the next general election. If approved by a majority of the electors voting thereon, the amendment shall become a part of this constitution on the first day of July after certification of the election returns unless the amendment provides otherwise.

Cross-References

Right of people to alter constitution, Art. II, sec. 2, Mont. Const.; 13-27-201.

Legislature, Art. V, Mont. Const.; Title 5.

Definition of general election for purposes of ballot issues, 13-1-101(8).

Times for holding general elections, 13-1-104.

Qualified voter, 13-1-111.

Ballot issues generally, Title 13, ch. 27.

Effective date of amendments approved by the people, 13-27-105.

Verification of signatures by county officials — allocating voters following reapportionment, 13-27-303.

Transmittal to Attorney General of amendments referred by Legislature, 13-27-310.

Publication of proposed amendments, 13-27-311.

Statements of Attorney General on issues referred by Legislature, 13-27-315, 13-27-316.

Certification of ballot form, 13-27-501.

Determination of result of election on ballot issue, 13-27-503.

Copies of approved issues to be sent to Legislative Services Division, 13-27-504.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2944, 2945.

Committee report, Vol. I 353, 354, 357, 360 through 362; Vol. II 852, 854, 856, 858, 1079.

Cross-references, 1889 and 1972 Constitutions, Vol. I 365.

Debate — committee report, Trans. 495 through 501, 505, 533, 534 [referred to as section 11], 2711.

Debate — style and drafting report, Trans. 1192, 2929.

Delegate proposals, Vol. I 119, 120, 210, 211, 257.

Final consideration, Trans. 1917, 1918.

Text as adopted, Vol. II 1104.

Section 9. Amendment by initiative. (1) The people may also propose constitutional amendments by initiative. Petitions including the full text of the proposed amendment shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The petitions shall be filed with the secretary of state. If the petitions are found to have been signed by the required number of electors, the secretary of state shall cause the amendment to be published as provided by law twice each month for two months previous to the next regular state-wide election.

(3) At that election, the proposed amendment shall be submitted to the qualified electors for approval or rejection. If approved by a majority voting thereon, it shall become a part of the constitution effective the first day of July following its approval, unless the amendment provides otherwise.

Cross-References

Right of people to alter constitution, Art. II, sec. 2, Mont. Const.; 13-27-201.

Legislative districting and apportionment, Art. V, sec. 14, Mont. Const.; Title 5, ch. 1.

Petition signers, Art. XIV, sec. 10, Mont. Const.

Submission of more than one amendment, Art. XIV, sec. 11, Mont. Const.

Times for holding general elections, 13-1-104.

Times for holding primary elections, 13-1-107.

Qualified voter, 13-1-111.

Ballot issues generally, Title 13, ch. 27.

Effective date of initiatives, 13-27-105.

Form of petition for initiative, 13-27-201, 13-27-202, 13-27-207.

Publication of proposed amendments, 13-27-311.

Review of petition — Attorney General's statement, 13-27-312.

Certification of ballot form, 13-27-501.

Determination of result of election on ballot issue, 13-27-503.

Copies of approved issues to be sent to Legislative Services Division, 13-27-504.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2944, 2945.

Committee report, Vol. I 354, 362, 363, 410; Vol. II 852, 854 through 856, 858, 1079.

Debate — committee report, Trans. 491, 492, 505 through 514 [referred to as section 13], 2702 through 2704, 2711, 2745.

Debate — style and drafting report, Trans. 1192 through 1194, 2929.

Delegate proposals, Vol. I 119, 120, 268, 277.

Final consideration, Trans. 1918, 1919.

Text as adopted, Vol. II 1104.

Section 10. Petition signers. The number of qualified electors required for the filing of any petition provided for in this Article shall be determined by the number of votes cast for the office of governor in the preceding general election.

Cross-References

Initiative for Constitutional Convention, Art. XIV, sec. 2, Mont. Const.

Initiative for constitutional amendment, Art. XIV, sec. 9, Mont. Const.

Times for general election, 13-1-104.

Election records to be maintained by Secretary of State, 13-1-204.

Report of state canvass to be filed in Office of Secretary of State, 13-15-506.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2944, 2945.

Committee report, Vol. I 354, 362; Vol. II 852, 855, 856, 858, 1079.

Debate — committee report, Trans. 514 [referred to as section 14].

Debate — style and drafting report, Trans. 1194, 1195, 2929.

Delegate proposals, Vol. I 119, 277.

Final consideration, Trans. 1919, 1920.

Text as adopted, Vol. II 1104.

Section 11. Submission. If more than one amendment is submitted at the same election, each shall be so prepared and distinguished that it can be voted upon separately.

Cross-References

Amendment by legislative referendum, Art. XIV, sec. 8, Mont. Const.

Amendment by initiative, Art. XIV, sec. 9, Mont. Const.

Certification of ballot form, 13-27-501.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2944, 2945.

Committee report, Vol. I 354, 363; Vol. II 852, 855, 856, 858, 1079.

Debate — committee report, Trans. 514 through 522, 534 [referred to as section 15].

Debate — style and drafting report, Trans. 1195, 1196, 2929.

Delegate proposals, Vol. I 119, 120, 211.

Final consideration, Trans. 1920, 1921.

Text as adopted, Vol. II 1104.

Done in open convention at the city of Helena, in the state of Montana, this twenty-second day of March, in the year of our Lord one thousand nine hundred and seventy-two.

Leo Graybill, Jr., President
Jean M. Bowman, Secretary
Magnus Aasheim
John H. Anderson, Jr.
Oscar L. Anderson
Harold Arbanas
Franklin Arness
Cedor B. Aronow
William H. Artz
Thomas M. Ask
Betty Babcock
Lloyd Barnard
Grace C. Bates
Don E. Belcher
Ben E. Berg, Jr.
E. M. Berthelson
Chet Blaylock
Virginia H. Blend
Geoffrey L. Brazier
Bruce M. Brown
Daphne Bugbee
William A. Burkhardt
Marjorie Cain
Bob Campbell
Jerome J. Cate
Richard J. Champoux
Lyman W. Choate
Max Conover
C. Louise Cross
Wade J. Dahood
Carl M. Davis
Douglas Delaney
Maurice Driscoll
Dave Drum
Dorothy Eck
Marian S. Erdmann
Leslie Eskildsen
Mark Etchart
James R. Felt
Donald R. Foster
Noel D. Furlong
J. C. Garlington
E. S. Gysler
Otto T. Habedank
Rod Hanson
R. S. Hanson
Gene Harbaugh
Paul K. Harlow
George Harper
Daniel W. Harrington
George B. Heliker
David L. Holland
Arnold W. Jacobsen
George H. James
Torrey B. Johnson
Thomas F. Joyce
A. W. Kamhoot
Robert Lee Kelleher
John H. Leuthold
Jerome T. Loendorf
Peter "Pete" Lorello
Joseph H. McCarvel
Russell C. McDonough
Mike McKeon
Charles B. McNeil
Charles H. Mahoney
Rachell K. Mansfield
Fred J. Martin
J. Mason Melvin
Lyle R. Monroe
Marshall Murray
Robert B. Noble
Richard A. Nutting
Mrs. Thomas Payne
Catherine Pemberton
Donald Rebal
Arlyne E. Reichert
Mrs. Mae Nan Robinson
Richard B. Roeder
George W. Rollins
Miles Romney
Sterling Rygg
Don Scanlin
John M. Schiltz
Henry Siderius
Clark E. Simon
Carman M. Skari
M. Lynn Sparks
Lucile Speer
R. J. Studer, Sr.
Mrs. John Justin
(Veronica) Sullivan
William H. Swanberg
John H. Toole
Mrs. Edith M. Van Buskirk
Robert Vermillion
Roger A. Wagner
Jack K. Ward
Margaret S. Warden
Archie O. Wilson
Robert F. Woodmansey

TRANSITION SCHEDULE

Transition Schedule. The following provisions shall remain part of this Constitution until their terms have been executed. Once each year the attorney general shall review the following provisions and certify to the secretary of state which, if any, have been executed. Any provisions so certified shall thereafter be removed from this Schedule and no longer published as part of this Constitution.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 3013, 3014.

Committee report, Vol. II 1080, 1081.

Debate — committee report, Trans. 2596, 2828, 2863, 2878, 2946 through 2948, 2988, 2997 through 3004, 3008.

Text as adopted, Vol. II 1104.

Section 1. Accelerated effective date. Executed (certified by letter, December 4, 1974).

Constitutional Convention Transcript Cross-References

Adoption, Trans. 3014, 3015.

Committee report (style and drafting), Vol. II 1082.

Debate, Trans. 3004, 3006 through 3008.

Text as adopted, Vol. II 1108.

Section 2. Delayed effective date. Executed (certified by letter, December 4, 1974).

Constitutional Convention Transcript Cross-References

Adoption, Trans. 3014, 3015.

Committee report, Vol. II 1082.

Debate, Trans. 1570, 1571, 3004, 3005, 3007, 3008.

Text as adopted, Vol. II 1108.

Section 3. Prospective operation of declaration of rights. Any rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 3014, 3015.

Committee report, Vol. II 1082.

Debate, Trans. 3005, 3007, 3008.

Text as adopted, Vol. II 1108.

Section 4. Terms of judiciary. Executed (certified by letter, December 20, 1978).

Constitutional Convention Transcript Cross-References

Adoption, Trans. 3014, 3015.

Committee report, Vol. II 1082.

Debate — committee report, Trans. 1115, 1116, 3005, 3007, 3008.

Delegate proposals, Vol. I 88, 206.

Text as adopted, Vol. II 1108.

Section 5. Terms of legislators. Executed (certified by letter, February 22, 1977).

Constitutional Convention Transcript Cross-References

Adoption, Trans. 3014, 3015.

Committee report, Vol. II 1082.

Debate — committee report, Trans. 1570, 1571, 1591 through 1593, 1629, 3005, 3007, 3008.

Text as adopted, Vol. II 1108.

Section 6. General transition. (1) The rights and duties of all public bodies shall remain as if this Constitution had not been adopted with the exception of such changes as are contained in this Constitution. All laws, ordinances, regulations, and rules of court not contrary to, or inconsistent with, the provisions of this Constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pursuant to this Constitution.

(2) The validity of all public and private bonds, debts, and contracts, and of all suits, actions, and rights of action, shall continue as if no change had taken place.

(3) Executed (certified by letter, February 22, 1977).

Constitutional Convention Transcript Cross-References

Adoption, Trans. 3014, 3015.

Committee report, Vol. II 1082, 1083.

Debate — committee report, Trans. 2776, 3005, 3007, 3008.

Delegate proposals, Vol. I 92, 93, 241, 249.

Text as adopted, Vol. II 1108, 1109.

TITLE 1

GENERAL LAWS AND DEFINITIONS

Ch.
1. General Provisions.
2. Statutory Construction.
3. Maxims of Jurisprudence.
4. Interpretation of Instruments.
5. Proof and Acknowledgment of Instruments — Notaries Public.
6. Oaths.
Chapters 7 through 10 reserved.
11. Publication and Updating of the Code — Code Commissioner.
12. Commission on Uniform State Laws.
13. International Relations. Repealed. Sec. 82, Ch. 545, L. 1995.

CHAPTER 1

GENERAL PROVISIONS

Part 1 — Meaning of Law

1-1-101. Definition of law.
1-1-102. How expressed.
1-1-103. Laws — written or unwritten.
1-1-104. Written law defined.
1-1-105. Constitution and statutes.
1-1-106. Public and private statutes.
1-1-107. Unwritten law defined.
1-1-108. Common law — applicability of.
1-1-109. Common law of England — when rule of decision.

Part 2 — General Definitions of Terms Used in Code

1-1-201. Terms of wide applicability.
1-1-202. Terms relating to procedure and the judiciary.
1-1-203. Terms relating to instruments and other writings.
1-1-204. Terms denoting state of mind.
1-1-205. Terms relating to property and decedents' estates.
1-1-206. Terms relating to obligations and transactions.
1-1-207. Miscellaneous terms.
1-1-208 through 1-1-213 reserved.
1-1-214. Repealed.
1-1-215. Residence — rules for determining.
1-1-216. Legal holidays and business days.
1-1-217. Notice — actual and constructive.
1-1-218. Words giving joint authority.
1-1-219. Relationship by affinity.
1-1-220 through 1-1-223 reserved.
1-1-224. Observance of right to keep and bear arms.
1-1-225. Arbor Day as official day of observance.
1-1-226. Official observance of Montana's hunting heritage.

Part 3 — Rules Concerning Time

1-1-301. Definitions.
1-1-302. Computation of time — what calendar used.
1-1-303. Leap year.
1-1-304. Computation of fractions of a year.
1-1-305. Computation of time — when fractions of a day disregarded.
1-1-306. Computation of time — which days counted.

1-1-307. Postponement of day appointed for an action when it falls on a holiday or Saturday.

Part 4 — Citizenship

1-1-401. People defined.
1-1-402. Citizens defined.
1-1-403. Allegiance.
1-1-404. Allegiance — how renounced.
1-1-405. Persons not citizens.

Part 5 — State Symbols—Medal

1-1-501. Great seal.
1-1-502. State flag.
1-1-503. State floral emblem.
1-1-504. State bird.
1-1-505. State gem stones.
1-1-506. State grass.
1-1-507. State fish.
1-1-508. State animal.
1-1-509. State fossil.
1-1-510. English as official and primary language of state and local governments.
1-1-511. State ballad.
1-1-512. State Vietnam veterans' memorial.
1-1-513. State arboretum.
1-1-514 reserved.
1-1-515. Montana medal of valor established.
1-1-516. State Korean veterans' memorial.

Part 1
Meaning of Law

1-1-101. Definition of law. "Law" is a solemn expression of the will of the supreme power of the state.

History: En. Sec. 5150, Pol. C. 1895; re-en. Sec. 3550, Rev. C. 1907; re-en. Sec. 5670, R.C.M. 1921; Cal. Pol. C. Sec. 4466; re-en. Sec. 5670, R.C.M. 1935; R.C.M. 1947, 12-101.

1-1-102. How expressed. The will of the supreme power is expressed by:

(1) the constitution;

(2) statutes.

History: En. Sec. 5151, Pol. C. 1895; re-en. Sec. 3551, Rev. C. 1907; re-en. Sec. 5671, R.C.M. 1921; Cal. Pol. C. Sec. 4467; re-en. Sec. 5671, R.C.M. 1935; R.C.M. 1947, 12-102.

1-1-103. Laws — written or unwritten. Laws, whether organic or ordinary, are either written or unwritten.

History: En. Sec. 3183, C. Civ. Proc. 1895; re-en. Sec. 7901, Rev. C. 1907; re-en. Sec. 10545, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1895; re-en. Sec. 10545, R.C.M. 1935; R.C.M. 1947, 93-1001-7.

1-1-104. Written law defined. A written law is that which is promulgated in writing and of which a record is in existence.

History: En. Sec. 3184, C. Civ. Proc. 1895; re-en. Sec. 7902, Rev. C. 1907; re-en. Sec. 10546, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1896; re-en. Sec. 10546, R.C.M. 1935; R.C.M. 1947, 93-1001-8.

1-1-105. Constitution and statutes. The organic law is the constitution of government and is altogether written. Other written laws are denominated statutes. The written law of this state is therefore contained in its constitution and statutes and in the constitution and statutes of the United States.

History: En. Sec. 3185, C. Civ. Proc. 1895; re-en. Sec. 7903, Rev. C. 1907; re-en. Sec. 10547, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1897; re-en. Sec. 10547, R.C.M. 1935; R.C.M. 1947, 93-1001-9.

1-1-106. Public and private statutes. Statutes are public or private. A private statute is one which concerns only certain designated individuals and affects only their private rights. All other statutes are public, in which are included statutes creating or affecting corporations.

History: En. Sec. 3186, C. Civ. Proc. 1895; re-en. Sec. 7904, Rev. C. 1907; re-en. Sec. 10548, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1898; re-en. Sec. 10548, R.C.M. 1935; R.C.M. 1947, 93-1001-10.

Cross-References

Special laws prohibited, Art. II, sec. 31, Mont. Const.; Art. V, sec. 11(5), Mont. Const.; Art. V, sec. 12, Mont. Const.

1-1-107. Unwritten law defined. Unwritten law is the law not promulgated and recorded, as mentioned in 1-1-104, but which is, nevertheless, observed and administered in the courts of the country. It has no certain repository but is collected from the reports of the decisions of the courts and treatises of learned men.

History: En. Sec. 3187, C. Civ. Proc. 1895; re-en. Sec. 7905, Rev. C. 1907; re-en. Sec. 10549, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1899; re-en. Sec. 10549, R.C.M. 1935; R.C.M. 1947, 93-1001-11.

1-1-108. Common law — applicability of. In this state there is no common law in any case where the law is declared by statute. But where not so declared, if the same is applicable and of a general nature and not in conflict with the statutes, the common law shall be the law and rule of decision.

History: En. Sec. 3452, C. Civ. Proc. 1895; re-en. Sec. 8060, Rev. C. 1907; re-en. Sec. 10703, R.C.M. 1921; re-en. Sec. 10703, R.C.M. 1935; R.C.M. 1947, 12-104.

1-1-109. Common law of England — when rule of decision. The common law of England, so far as it is not repugnant to or inconsistent with the constitution of the United States or the constitution or laws of this state, is the rule of decision in all the courts of this state.

History: En. p. 356, Bannack Stat.; re-en. p. 388, Cod. Stat. 1871; re-en. Sec. 144, 5th Div. Rev. Stat. 1879; re-en. Sec. 201, 5th Div. Comp. Stat. 1887; amd. Sec. 5152, Pol. C. 1895; re-en. Sec. 3552, Rev. C. 1907; re-en. Sec. 5672, R.C.M. 1921; Cal. Pol. C. Sec. 4468; re-en. Sec. 5672, R.C.M. 1935; R.C.M. 1947, 12-103.

Cross-References

Statutes in derogation of common law — liberal construction, 1-2-103.

Part 2

General Definitions of Terms Used in Code

Part Cross-References

See "Words and Phrases Defined in Code", MCA General Index.

1-1-201. Terms of wide applicability. (1) Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(a) "Oath" includes an affirmation or declaration.

(b) "Person" includes a corporation as well as a natural person.

(c) "Several" means two or more.

(d) "State", when applied to the different parts of the United States, includes the District of Columbia and the territories.

(e) "United States" includes the District of Columbia and the territories.

(2) Wherever the word "man" or "men" or a word which includes the syllable "man" or "men" in combination with other syllables, such as "workman", appears in this code, such word or syllable shall be deemed to include "woman" or "women" unless the context clearly indicates a contrary intent and unless the subject matter of the statute relates clearly and necessarily to the male sex only.

(3) Whenever the term "heretofore" occurs in any statute, it shall be construed to mean any time previous to the day such statute shall take effect. Whenever the word "hereafter" occurs, it shall be construed to mean the time after the statute containing the term shall take effect.

History: (1)En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; Sec. 19-103, R.C.M. 1947; (2)En. 12-216 by Sec. 61, Ch. 535, L. 1975; Sec. 12-217, R.C.M. 1947; (3)En. Sec. 4670, Civ. C. 1895; re-en. Sec. 6232, Rev. C. 1907; re-en. Sec. 8782, R.C.M. 1921; re-en. Sec. 8782, R.C.M. 1935; Sec. 19-104, R.C.M. 1947; R.C.M. 1947, 12-217, 19-103(part), (6), (7), (14), (27), (29), 19-104.

Cross-References

General definitional rules — verb tense, gender, and number, 1-2-105.

1-1-202. Terms relating to procedure and the judiciary. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) A "deposition" means a written declaration under oath or affirmation, made upon notice to the adverse party for the purpose of enabling him to attend and cross-examine.

(2) "Judicial officers" means justices of the supreme court, judges of the district courts, justices of the peace, municipal judges, and city judges.

(3) A "judicial record" means the record of official entry of the proceedings in a court of justice or of the official act of a judicial officer in an action or special proceeding.

(4) An "oral examination" means an examination in the presence of the jury or tribunal that is to decide the fact or act upon it or the testimony being heard by the jury or tribunal from the lips of the witness.

(5) "Process" means a writ or summons issued in the course of judicial proceedings.

(6) For purposes of legal notification, the term "registered mail" means registered or certified mail.

(7) "Testify" means every mode of oral statement under oath or affirmation.

(8) "Writ" means an order in writing issued in the name of the state or of a court or judicial officer.

History: Ap. p. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; Sec. 19-103, R.C.M. 1947; (1)En. Sec. 3322, C. Civ. Proc. 1895; re-en. Sec. 7989, Rev. C.

1907; re-en. Sec. 10633, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2004; re-en. Sec. 10633, R.C.M. 1935; Sec. 93-1601-3, R.C.M. 1947; (3)En. Sec. 3192, C. Civ. Proc. 1895; re-en. Sec. 7910, Rev. C. 1907; re-en. Sec. 10554, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1904; re-en. Sec. 10554, R.C.M. 1935; Sec. 93-1001-16, R.C.M. 1947; (5)En. Sec. 3323, C. Civ. Proc. 1895; re-en. Sec. 7990, Rev. C. 1907; re-en. Sec. 10634, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2005; Sec. 10634, R.C.M. 1935; Sec. 93-1601-4, R.C.M. 1947; (7)En. Sec. 1, Ch. 5, L. 1967; Sec. 19-122, R.C.M. 1947; R.C.M. 1947, 19-103(part), (9), (10), (13), (30), (31), (33), 19-122, 93-1001-16, 93-1601-3, 93-1601-4; amd. Sec. 248, Ch. 800, L. 1991.

1-1-203. Terms relating to instruments and other writings. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) The "execution" of an instrument is the subscribing and delivering it, with or without affixing a seal.

(2) The term "folio", when used as a measure for computing fees, means 100 words, counting every two figures necessarily used as a word. Any portion of a folio, when in the whole paper there is not a complete folio and when there is an excess over the last folio exceeding one-half, may be computed as a folio.

(3) "Printing" is the act of reproducing a design on a surface by any process.

(4) "Signature" or "subscription" includes the mark of a person who cannot write if the person's name is written near the mark by another person who also signs his own name as a witness.

(5) A "subscribing witness" is one who sees a writing executed or hears it acknowledged and at the request of the party thereupon signs his name as a witness.

(6) "Writing" includes printing.

History: Ap. p. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; Sec. 19-103, R.C.M. 1947; (1)En. Sec. 3224, C. Civ. Proc. 1895; re-en. Sec. 7937, Rev. C. 1907; re-en. Sec. 10581, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1933; re-en. Sec. 10581, R.C.M. 1935; Sec. 93-1101-5, R.C.M. 1947; (2)En. Sec. 4618, Pol. C. 1895; re-en. Sec. 3151, Rev. C. 1907; re-en. Sec. 4899, R.C.M. 1921; re-en. Sec. 4899, R.C.M. 1935; Sec. 25-215, R.C.M. 1947; (3)En. Sec. 1, Ch. 267, L. 1969; amd. Sec. 11, Ch. 100, L. 1973; Sec. 19-103.1, R.C.M. 1947; (5)En. Sec. 3226, C. Civ. Proc. 1895; re-en. Sec. 7939, Rev. C. 1907; re-en. Sec. 10583, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1935; re-en. Sec. 10583, R.C.M. 1935; Sec. 93-1101-7, R.C.M. 1947; R.C.M. 1947, 19-103(part), (28), (32), 19-103.1, 25-215, 93-1101-5, 93-1101-7.

Cross-References

Printing and legal notices, Title 18, ch. 7.

1-1-204. Terms denoting state of mind. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) "Corruptly" denotes a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to or to some other person.

(2) "Knowingly" denotes only a knowledge that the facts exist which bring the act or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of the act or omission.

(3) "Malice" and "maliciously" denote a wish to vex, annoy, or injure another person or an intent to do a wrongful act, established either by proof or presumption of law.

(4) "Neglect", "negligence", "negligent", and "negligently" denote a want of the attention to the nature or probable consequences of the act or omission that a prudent man would ordinarily give in acting in his own concerns.

(5) "Willfully", when applied to the intent with which an act is done or omitted, denotes a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate the law, to injure another, or to acquire any advantage.

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part), (19) thru (23).

Cross-References

Liability for negligent and willful acts, 27-1-701.

Criminal law state of mind and other definitions, Title 45, ch. 2, part 1.

1-1-205. Terms relating to property and decedents' estates. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) "Personal property" means money, goods, chattels, things in action, and evidences of debt.

(2) "Pledge", "mortgage", "conditional sale", "lien", "assignment", and like terms, when used in referring to a security interest in personal property, include a corresponding type of security interest under the Uniform Commercial Code—Secured Transactions.

(3) "Property" means real and personal property.

(4) "Real property" means lands, tenements, hereditaments, and possessory title to public lands.

(5) "Will" includes codicils.

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part), (1), (2), (3), (8), (26).

Cross-References

Uniform Commercial Code — secured transactions, Title 30, ch. 9.

Property, Title 70.

Mortgages, Pledges, and Liens, Title 71.

Estates, Trusts, and Fiduciary Relationships, Title 72.

1-1-206. Terms relating to obligations and transactions. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) "Customary" means according to usage.

(2) "Third persons" means all persons who are not parties to the obligation or transaction concerning which the phrase is used.

(3) "Usage" means a reasonable and lawful public custom concerning transactions of the same nature as those which are to be affected thereby, existing at the place where the obligation is to be performed, and either known to the parties or so well established, general, and uniform that the parties must be presumed to have acted with reference thereto.

(4) "Usual" means according to usage.

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part), (15) thru (18).

Cross-References

Course of dealing and usage of trade, 30-1-205.

1-1-207. Miscellaneous terms. (1) Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(a) "Bribe" means anything of value or advantage, present or prospective, or any promise or undertaking to give anything of value or advantage, that is asked, given, or accepted with a corrupt intent to unlawfully influence the person to whom it is given in the person's action, vote, or opinion in any public or official capacity.

(b) "Montana state prison" means the Montana state prison as defined in 53-30-101(3)(b).

(c) "Peace officer" has the meaning as defined in 46-1-202.

(d) "State prison" or "prison" means:

(i) the Montana state prison as described in 53-30-101(1);

(ii) the Montana women's prison as defined in 53-30-101(3)(c);

(iii) a Montana regional correctional facility;

(iv) a detention center in another jurisdiction detaining inmates from Montana pursuant to 53-30-106; or

(v) a combination of the facilities listed in this subsection (1)(d).

(e) "Vessel", when used in reference to shipping, includes ships of all kinds, steamboats and steamships, canal boats, and every structure adapted to be navigated from place to place.

(2) Subsections (1)(b) and (1)(d) do not authorize a court to sentence a person to a correctional facility listed in those subsections.

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part), (11), (12), (24); amd. Sec. 249, Ch. 800, L. 1991; amd. Sec. 1, Ch. 189, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 189 inserted definitions of Montana State Prison and state prison or prison; inserted (2) clarifying that the new definitions do not authorize a court to sentence a person to the defined institutions; and made minor changes in style.

Cross-References

Definitions of documented vessel, motorboat, and vessel, 23-2-502.

1-1-208 through 1-1-213 reserved.

1-1-214. Repealed. Sec. 2, Ch. 17, L. 1991.

History: En. Sec. 2, Ch. 431, L. 1987.

1-1-215. Residence — rules for determining. Every person has, in law, a residence. In determining the place of residence, the following rules are to be observed:

(1) It is the place where a person remains when not called elsewhere for labor or other special or temporary purpose and to which the person returns in seasons of repose.

(2) There may only be one residence. If a person claims a residence within Montana for any purpose, then that location is the person's residence for all purposes unless there is a specific statutory exception.

(3) A residence cannot be lost until another is gained.

(4) The residence of a minor's parents or, if one of them is deceased or they do not share the same residence, the residence of the parent having legal custody or, if neither parent has legal custody, the residence of the parent with whom the minor customarily resides is the residence of the unmarried minor. In case of a controversy, the district court may declare which parental residence is the residence of an unmarried minor.

(5) The residence of an unmarried minor who has a parent living cannot be changed by either the minor's own act or that of the minor's guardian.

(6) The residence can be changed only by the union of act and intent.

History: En. Sec. 72, Pol. C. 1895; re-en. Sec. 32, Rev. C. 1907; re-en. Sec. 33, R.C.M. 1921; Cal. Pol. C. Sec. 52; re-en. Sec. 33, R.C.M. 1935; amd. Sec. 4, Ch. 164, L. 1975; R.C.M. 1947, 83-303; amd. Sec. 1, Ch. 367, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 367 in (2) inserted second sentence providing that a claim of residence within Montana for any purpose establishes a person's residence for all purposes; and made minor changes in style.

Cross-References

Citizenship, Title 1, ch. 1, part 4.

Residence for registration and voting, 13-1-112.

Resident defined for purposes of bidding on public contracts, 18-1-103.

Presumptions and rules as to domicile for university students, 20-25-503.

Residence and resident defined for purpose of issuing resident fishing and hunting licenses, 87-2-102.

See also "residence", "residency", and "resident", Words and Phrases Defined in Code, MCA General Index.

1-1-216. Legal holidays and business days. (1) The following are legal holidays in the state of Montana:

(a) Each Sunday;
(b) New Year's Day, January 1;
(c) Martin Luther King Jr. Day, the third Monday in January;
(d) Lincoln's and Washington's Birthdays, the third Monday in February;
(e) Memorial Day, the last Monday in May;
(f) Independence Day, July 4;
(g) Labor Day, the first Monday in September;
(h) Columbus Day, the second Monday in October;
(i) Veterans' Day, November 11;
(j) Thanksgiving Day, the fourth Thursday in November;
(k) Christmas Day, December 25;
(l) State general election day.

(2) If any of the above-enumerated holidays (except Sunday) fall upon a Sunday, the Monday following is a holiday. All other days are business days.

History: En. Sec. 10, Pol. C. 1895; re-en. Sec. 10, Rev. C. 1907; amd. Sec. 1, Ch. 21, L. 1921; re-en. Sec. 10, R.C.M. 1921; Cal. Pol. C. Secs. 10-11; re-en. Sec. 10, R.C.M. 1935; amd. Sec. 1, Ch. 209, L. 1955; amd. Sec. 1, Ch. 6, L. 1965; amd. Sec. 1, Ch. 89, L. 1969; amd. Sec. 6, Ch. 32, L. 1971; amd. Sec. 1, Ch. 16, L. 1974; R.C.M. 1947, 19-107(part); amd. Sec. 1, Ch. 431, L. 1987; amd. Sec. 1, Ch. 17, L. 1991.

Cross-References

Arbor Day as official day of observance, 1-1-225.

State employees — holidays — observance when falling on employee's day off, 2-18-603.

School holidays, 20-1-305 through 20-1-307.

Bank holidays, 32-1-481.

1-1-217. Notice — actual and constructive. (1) Notice is:

(a) actual whenever it consists of express information of a fact;
(b) constructive whenever it is imputed by law.

(2) Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact has constructive notice of the fact itself in all cases in which, by prosecuting such inquiry, he might have learned such facts.

History: (1)En. Sec. 4666, Civ. C. 1895; re-en. Sec. 6228, Rev. C. 1907; re-en. Sec. 8780, R.C.M. 1921; Cal. Civ. C. Sec. 18; Based on Field Civ. C. Secs. 2009, 2010; re-en. Sec. 8780, R.C.M. 1935; amd. Sec. 4, Ch. 309, L. 1977; Sec. 19-105, R.C.M. 1947; (2)En. Sec. 4667, Civ. C. 1895; re-en. Sec. 6229, Rev. C. 1907; re-en. Sec. 8781, R.C.M. 1921; Cal. Civ. C. Sec. 19; Based on Field Civ. C. Sec. 2011; re-en. Sec. 8781, R.C.M. 1935; R.C.M. 1947, 19-106; R.C.M. 1947, 19-105, 19-106.

1-1-218. Words giving joint authority. Words giving a joint authority to three or more public officers or other persons are construed as giving such authority to a majority of them unless it is otherwise expressed in the act giving the authority.

History: En. Sec. 14, Pol. C. 1895; re-en. Sec. 14, Rev. C. 1907; re-en. Sec. 14, R.C.M. 1921; Cal. Pol. C. Sec. 15; re-en. Sec. 14, R.C.M. 1935; R.C.M. 1947, 19-101.

1-1-219. Relationship by affinity. (1) Unless the context requires otherwise, in this code "affinity" means the relation which one spouse has, by virtue of the marriage, to blood relatives of the other. Therefore, a person has the same relation by affinity to his spouse's blood relatives as his spouse has to them by consanguinity and vice versa.

(2) Degrees of relationship by affinity are computed in the same manner as degrees of relationship by consanguinity.

(3) Notwithstanding subsection (1), the term "affinity" includes the relation of husband and wife. Husband and wife are considered to be related by affinity in the first degree.

History: En. Sec. 1, Ch. 119, L. 1979.

Cross-References

Representation, 72-2-116.

1-1-220 through 1-1-223 reserved.

1-1-224. Observance of right to keep and bear arms. The week beginning the first Monday in March is an official week of observance to commemorate Montana's valued heritage of the right of each person to keep and bear arms in the defense of his home, person, or property or in aid of civil power. During this week, all Montanans are urged to reflect on their right to keep and bear arms and to celebrate this right in lawful ways.

History: En. Sec. 1, Ch. 421, L. 1991.

Cross-References

Right to bear arms, Art. II, sec. 12, Mont. Const.

Civilian control of military, Art. II, sec. 32, Mont. Const.

1-1-225. Arbor Day as official day of observance. (1) To increase public awareness of the vital importance of conserving and propagating trees and forests to the everyday life of Montana citizens, the last Friday in April is designated Arbor Day and an official day of observance. On this day, there may be special observances and exercises throughout the state to celebrate and emphasize the importance of cultivating forest, fruit, and ornamental trees.

(2) The governor shall encourage the observances and exercises described in this section and, by proclamation, call the public's attention to the importance of the state's forest resources.

History: En. Sec. 1, Ch. 16, L. 1989.

1-1-226. Official observance of Montana's hunting heritage. The week beginning the third Monday in September is an official week of observance in Montana to commemorate this state's valued heritage of hunting game animals. During this week, all Montanans are urged to:

(1) reflect on hunting as an expression of our culture and heritage;

(2) acknowledge that it is our community of sportsmen, sportswomen, and hunters who have made the greatest contributions to the establishment of current game animal populations; and

(3) celebrate this culture and heritage in all lawful ways.

History: En. Sec. 1, Ch. 455, L. 1991.

Cross-References

Fish and Wildlife, Title 87.

Part 3

Rules Concerning Time

1-1-301. Definitions. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) A "day" is the period of time between any midnight and the midnight following.

(2) "Daytime" is the period of time between sunrise and sunset, and "nighttime" is the period of time between sunset and sunrise.

(3) "Month" means a calendar month.

(4) A "week" consists of 7 consecutive days.

(5) "Year" means a calendar year.

History: Ap. p. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; Sec. 19-103, R.C.M. 1947; (3)En. Sec. 3143, Pol. C. 1895; re-en. Sec. 2030, Rev. C. 1907; re-en. Sec. 4280, R.C.M. 1921; Cal. Pol. C. Sec. 3258; re-en. Sec. 4280, R.C.M. 1935; Sec. 90-404, R.C.M. 1947; (4)En. Sec. 3144, Pol. C. 1895; re-en. Sec. 2031, Rev. C. 1907; re-en. Sec. 4281, R.C.M. 1921; Cal. Pol. C. Sec. 3259; re-en. Sec. 4281, R.C.M. 1935; Sec. 90-405, R.C.M. 1947; (5)En. Sec. 3145, Pol. C. 1895; re-en. Sec. 2032, Rev. C. 1907; re-en. Sec. 4282, R.C.M. 1921; Cal. Pol. C. Sec. 3260; re-en. Sec. 4282, R.C.M. 1935; Sec. 90-406, R.C.M. 1947; R.C.M. 1947, 19-103(part), (4), (5), 90-404, 90-405, 90-406.

1-1-302. Computation of time — what calendar used. Time is computed according to the Gregorian or new style, and January 1 in every year passed since 1752 or to come must be reckoned as the first day of the year.

History: En. Sec. 3140, Pol. C. 1895; re-en. Sec. 2027, Rev. C. 1907; re-en. Sec. 4277, R.C.M. 1921; Cal. Pol. C. Sec. 3255; re-en. Sec. 4277, R.C.M. 1935; R.C.M. 1947, 90-401.

1-1-303. Leap year. Except the year 1900, every fourth year which, by usage in this state, is considered a leap year is a leap year consisting of 366 days.

History: En. Sec. 3141, Pol. C. 1895; re-en. Sec. 2028, Rev. C. 1907; re-en. Sec. 4278, R.C.M. 1921; Cal. Pol. C. Sec. 3256; re-en. Sec. 4278, R.C.M. 1935; R.C.M. 1947, 90-402.

1-1-304. Computation of fractions of a year. Fractions of a year are computed by the number of months; thus, half a year is 6 months.

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd.

Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part).

1-1-305. Computation of time — when fractions of a day disregarded. Fractions of a day are disregarded in computations which include more than 1 day and involve no questions of priority.

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part).

1-1-306. Computation of time — which days counted. The time in which any act provided by law is to be done is computed by excluding the first day and including the last unless the last day is a holiday, and then it is also excluded.

History: En. Sec. 430, p. 130, Bannack Stat.; amd. Sec. 501, p. 233, L. 1867; re-en. Sec. 578, p. 153, Cod. Stat. 1871; re-en. Sec. 519, p. 176, L. 1877; re-en. Sec. 519, 1st Div. Rev. Stat. 1879; re-en. Sec. 536, 1st Div. Comp. Stat. 1887; amd. Sec. 3459, C. Civ. Proc. 1895; re-en. Sec. 8067, Rev. C. 1907; re-en. Sec. 10707, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 12; re-en. Sec. 10707, R.C.M. 1935; R.C.M. 1947, 90-407.

1-1-307. Postponement of day appointed for an action when it falls on a holiday or Saturday. Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday or a Saturday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.

History: En. Sec. 12, Pol. C. 1895; re-en. Sec. 12, Rev. C. 1907; re-en. Sec. 12, R.C.M. 1921; Cal. Pol. C. Sec. 13; re-en. Sec. 12, R.C.M. 1935; R.C.M. 1947, 19-109; amd. Sec. 2, Ch. 69, L. 1987.

Cross-References

Legal holidays, 1-1-216.

Part 4
Citizenship

1-1-401. People defined. The people, as a political body, consist of:

(1) electors;

(2) citizens not electors.

History: En. Sec. 70, Pol. C. 1895; re-en. Sec. 30, Rev. C. 1907; re-en. Sec. 31, R.C.M. 1921; Cal. Pol. C. Sec. 50; re-en. Sec. 31, R.C.M. 1935; R.C.M. 1947, 83-301.

Cross-References

Qualified elector defined, Art. IV, sec. 2, Mont. Const.

Elector defined, 13-1-101.

1-1-402. Citizens defined. The citizens of the state are:

(1) all persons born in this state and residing within it, except the children of transient aliens;

(2) all persons born out of this state who are citizens of the United States and residing within this state.

History: En. Sec. 71, Pol. C. 1895; re-en. Sec. 31, Rev. C. 1907; re-en. Sec. 32, R.C.M. 1921; Cal. Pol. C. Sec. 51; re-en. Sec. 32, R.C.M. 1935; R.C.M. 1947, 83-302.

Cross-References

Rules for determining residency, 1-1-215.

1-1-403. Allegiance. Allegiance is the obligation of fidelity and obedience which every citizen owes to the state.

History: En. Sec. 81, Pol. C. 1895; re-en. Sec. 34, Rev. C. 1907; re-en. Sec. 35, R.C.M. 1921; Cal. Pol. C. Sec. 55; re-en. Sec. 35, R.C.M. 1935; R.C.M. 1947, 83-402.

1-1-404. Allegiance — how renounced. Allegiance may be renounced by a change of residence.

History: En. Sec. 82, Pol. C. 1895; re-en. Sec. 35, Rev. C. 1907; re-en. Sec. 36, R.C.M. 1921; Cal. Pol. C. Sec. 56; re-en. Sec. 36, R.C.M. 1935; R.C.M. 1947, 83-403.

1-1-405. Persons not citizens. Persons in this state not its citizens are either:

(1) citizens of other states; or
(2) aliens.

History: En. Sec. 83, Pol. C. 1895; re-en. Sec. 36, Rev. C. 1907; re-en. Sec. 37, R.C.M. 1921; Cal. Pol. C. Sec. 57; re-en. Sec. 37, R.C.M. 1935; R.C.M. 1947, 83-404.

Part 5

State Symbols — Medal

1-1-501. Great seal. The great seal of the state is as follows: a central group representing a plow and a miner's pick and shovel; upon the right, a representation of the Great Falls of the Missouri River; upon the left, mountain scenery; and underneath, the words "Oro y Plata". The seal must be 2 1/2 inches in diameter and surrounded by these words, "The Great Seal of the State of Montana".

History: En. Sec. 1, p. 42, L. 1893; re-en. Sec. 1130, Pol. C. 1895; re-en. Sec. 430, Rev. C. 1907; re-en. Sec. 526, R.C.M. 1921; re-en. Sec. 526, R.C.M. 1935; R.C.M. 1947, 19-111.

1-1-502. State flag. There is hereby established a state flag of Montana. The state flag of Montana shall be a flag having a blue field with a representation of the great seal of the state in the center and with golden fringe along the upper and lower borders of the flag; the same being the flag borne by the 1st Montana Infantry, U.S.V., in the Spanish-American War, with the exception of the device, "1st Montana Infantry, U.S.V."; and above the great seal of the state shall be the word "MONTANA" in helvetica bold letters of gold color equal in height to one-tenth of the total vertical measurement of the blue field.

History: En. Secs. 1, 2, Ch. 42, L. 1905; re-en. Secs. 432, 433, Rev. C. 1907; re-en. Secs. 528, 529, R.C.M. 1921; re-en. Secs. 528, 529, R.C.M. 1935; R.C.M. 1947, 19-113, 19-114; amd. Sec. 1, Ch. 49, L. 1981; amd. Sec. 1, Ch. 335, L. 1985.

1-1-503. State floral emblem. The flower known as Lewisia rediviva (bitterroot) shall be the floral emblem of the state of Montana.

History: En. Sec. 3282, Pol. C. 1895; re-en. Sec. 2097, Rev. C. 1907; re-en. Sec. 530, R.C.M. 1921; re-en. Sec. 530, R.C.M. 1935; R.C.M. 1947, 19-115.

1-1-504. State bird. The bird known as the western meadowlark, Sturnella neglecta (Audubon), as preferred by a referendum vote of Montana school children, shall be designated and declared to be the official bird of the state of Montana.

History: En. Sec. 1, Ch. 149, L. 1931; re-en. Sec. 530.1, R.C.M. 1935; R.C.M. 1947, 19-116.

1-1-505. State gem stones. The sapphire and the Montana agate are the official Montana state gem stones.

History: En. Sec. 1, Ch. 20, L. 1969; R.C.M. 1947, 19-123.

1-1-506. State grass. The grass known as bluebunch wheatgrass, Agropyron spicatum (pursh), shall be designated and declared to be the official grass of the state of Montana.

History: En. 19-124 by Sec. 1, Ch. 378, L. 1973; R.C.M. 1947, 19-124.

1-1-507. State fish. The blackspotted cutthroat trout, Salmo clarki, is the official Montana state fish.

History: En. Sec. 1, Ch. 6, L. 1977; R.C.M. 1947, 19-125.

1-1-508. State animal. The grizzly bear, ursus arctos horribilis, as preferred by a vote of Montana schoolchildren, is the official Montana state animal.

History: En. Sec. 1, Ch. 407, L. 1983.

1-1-509. State fossil. The duck-billed dinosaur Maiasaura peeblesorum is the official Montana state fossil.

History: En. Sec. 1, Ch. 37, L. 1985.

1-1-510. English as official and primary language of state and local governments. (1) English is the official and primary language of:

(a) the state and local governments;

(b) government officers and employees acting in the course and scope of their employment; and

(c) government documents and records.

(2) A state statute, local government ordinance, or state or local government policy may not require a specific foreign language to be used by government officers and employees acting in the course and scope of their employment or for government documents and records or require a specific foreign language to be taught in a school as a student's primary language.

(3) This section is not intended to violate the federal or state constitutional right to freedom of speech of government officers and employees acting in the course and scope of their employment. This section does not prohibit a government officer or employee acting in the course and scope of employment from using a language other than English, including use in a government document or record, if the employee chooses, or prohibit the teaching of other languages in a school for general educational purposes or as secondary languages.

(4) This section is not intended to limit the use of any other language by a tribal government. A school district and a tribe, by mutual agreement, may provide for the instruction of students that recognizes the cultural identity of Native American children and promotes the use of a common language for communication.

History: En. Sec. 1, Ch. 319, L. 1995.

Cross-References

Freedom of speech, Art. II, sec. 7, Mont. Const.

Educational goals and duties — Indian cultural heritage, Art. X, sec. 1, Mont. Const.

1-1-511. State ballad. The song "Montana Melody", written by Carleen Harvey and LeGrande Harvey, is the official state ballad of the state of Montana.

History: En. Sec. 1, Ch. 56, L. 1983.

1-1-512. State Vietnam veterans' memorial. (1) The memorial located in Rose Park, Missoula, Montana, dedicated to the men and women who served the United States in the Republic of Vietnam, is the official state Vietnam veterans' memorial.

(2) The department of commerce in the production of highway maps of the state of Montana is directed to reference the location of the official state Vietnam veterans' memorial in Rose Park, Missoula, Montana, on such maps.

History: En. Secs. 1, 2, Ch. 53, L. 1987.

1-1-513. State arboretum. The campus of the university of Montana-Missoula, is the state arboretum.

History: En. Sec. 1, Ch. 332, L. 1991; amd. sec. 36, Ch. 308, L. 1995.

1-1-514 reserved.

1-1-515. Montana medal of valor established. (1) The governor is authorized to present, in the name of the people of Montana, a medal to be known as the Montana medal of valor, bearing a suitable inscription and ribbon, to any citizen of the state who displays extraordinary courage in a situation threatening the lives of one or more people.

(2) The governor shall award the Montana medal of valor to anyone whose behavior, in his judgment, merits such recognition. The award must be made in a public ceremony at the recipient's city or town of residence or at a city or town designated by the recipient, except under the circumstances indicated in subsection (3).

(3) If the recipient of the medal of valor dies before the medal is awarded, the governor shall present the medal to the recipient's spouse, eldest surviving child, eldest surviving sibling, or either parent or to a person designated by one of these. If the medal is presented to a person who is not a resident of Montana, the award ceremony must be held at the state capitol in Helena.

History: En. Sec. 1, Ch. 537, L. 1985.

1-1-516. State Korean veterans' memorial. (1) The Korean veterans' memorial located in Stodden Park, Butte, Montana, dedicated to the men and women who served the United States in the Republic of Korea, is an official state Korean veterans' memorial.

(2) The department of commerce and the department of transportation are directed to reference the location of a state Korean veterans' memorial on official state maps.

History: En. Sec. 1, Ch. 319, L. 1997.

CHAPTER 2

STATUTORY CONSTRUCTION

Part 1 — General Provisions

1-2-101. Role of the judge — preference to construction giving each provision meaning.
1-2-102. Intention of the legislature — particular and general provisions.
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1-2-201. Statutes — effective date.
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1-2-205. Repeal of law creating criminal offense.
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1-2-208. Provisions of law not codified in Montana Code Annotated because redundant.

Part 1
General Provisions

1-2-101. Role of the judge — preference to construction giving each provision meaning. In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.

History: En. Sec. 612, p. 198, L. 1877; re-en. Sec. 612, 1st Div. Rev. Stat. 1879; re-en. Sec. 630, 1st Div. Comp. Stat. 1887; re-en. Sec. 3134, C. Civ. Proc. 1895; re-en. Sec. 7875, Rev. C. 1907; re-en. Sec. 10519, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1858; re-en. Sec. 10519, R.C.M. 1935; R.C.M. 1947, 93-401-15(part).

1-2-102. Intention of the legislature — particular and general provisions. In the construction of a statute, the intention of the legislature is to be pursued if possible. When a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it.

History: En. Sec. 613, p. 198, L. 1877; re-en. Sec. 613, 1st Div. Rev. Stat. 1879; re-en. Sec. 631, 1st Div. Comp. Stat. 1887; re-en. Sec. 3135, C. Civ. Proc. 1895; re-en. Sec. 7876, Rev. C. 1907; re-en. Sec. 10520, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1859; re-en. Sec. 10520, R.C.M. 1935; R.C.M. 1947, 93-401-16(part).

Cross-References

Particular versus general, 1-3-225.

1-2-103. Statutes in derogation of the common law — liberal construction. The rule of the common law that statutes in derogation thereof are to be strictly construed has no application to the statutes of the state of Montana. The statutes establish the law of this state respecting the subjects to which they relate, and their provisions and all proceedings under them are to be liberally construed with a view to effect their objects and to promote justice.

History: **En. Sec. 4, Pol. C. 1895; re-en. Sec. 4, Rev. C. 1907; amd. Sec. 2, Ch. 4, L. 1921; re-en. Sec. 4, R.C.M. 1921; Cal. Pol. C. Sec. 4; re-en. Sec. 4, R.C.M. 1935; R.C.M. 1947, 12-202.**

Cross-References

Common law — applicability of, 1-1-108.

Crimes — general purposes and principles of construction, 45-1-102.

1-2-104. Preference to construction favoring natural right. When a statute is equally susceptible of two interpretations, one in favor of natural right and the other against it, the former is to be adopted.

History: **En. Sec. 620, p. 200, L. 1877; re-en. Sec. 620, 1st Div. Rev. Stat. 1879; re-en. Sec. 638, 1st Div. Comp. Stat. 1887; re-en. Sec. 3142, C. Civ. Proc. 1895; re-en. Sec. 7883, Rev. C. 1907; re-en. Sec. 10527, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1866; re-en. Sec. 10527, R.C.M. 1935; R.C.M. 1947, 93-401-23(part).**

1-2-105. General definitional rules — verb tense, gender, and number. The following rules apply in this code:

(1) The present tense includes the future as well as the present.

(2) Words used in the masculine gender include the feminine and neuter.

(3) The singular includes the plural and the plural the singular.

History: **En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part).**

Cross-References

Gender usage, 1-1-201.

1-2-106. Construction of words and phrases. Words and phrases used in the statutes of Montana are construed according to the context and the approved usage of the language, but technical words and phrases and such others as have acquired a peculiar and appropriate meaning in law or are defined in chapter 1, part 2, as amended, are to be construed according to such peculiar and appropriate meaning or definition.

History: **En. Sec. 15, Pol. C. 1895; re-en. Sec. 15, Rev. C. 1907; amd. Sec. 3, Ch. 4, L. 1921; re-en. Sec. 15, R.C.M. 1921; Cal. Pol. C. Sec. 16; re-en. Sec. 15, R.C.M. 1935; R.C.M. 1947, 19-102.**

Cross-References

See "Words and Phrases Defined in Code", MCA General Index.

1-2-107. Applicability of definitions. Whenever the meaning of a word or phrase is defined in any part of this code, such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly appears.

History: **En. Sec. 4661, Civ. C. 1895; re-en. Sec. 6223, Rev. C. 1907; re-en. Sec. 8776, R.C.M. 1921; Field Civ. C. Sec. 2000; re-en. Sec. 8776, R.C.M. 1935; R.C.M. 1947, 12-215.**

1-2-108. Reference to other titles, chapters, parts, sections, or subsections — subsequent amendments. (1) A statute which refers to a title, chapter, part, section, or subsection number without further identification or attribution is presumed, unless the context clearly indicates otherwise, to refer to a title, chapter, part, section, or subsection of the Montana Code Annotated.

(2) A specific or implied reference to a title, chapter, part, section, or subsection of the Montana Code Annotated is presumed to be a reference to

that title, chapter, part, section, or subsection as it may be amended or changed from time to time. This presumption may be overcome only by a clear showing that a subsequent amendment or change in the title, chapter, part, section, or subsection is inconsistent with the continued purpose or meaning of the section referring to it.

(3) The presumption contained in subsection (2) applies retroactively as well as prospectively to any reference to a title, chapter, part, section, or subsection of the Montana Code Annotated, regardless of when the reference was created.

History: En. Sec. 1, Ch. 4, L. 1975; amd. Sec. 1, Ch. 309, L. 1977; R.C.M. 1947, 12-216; amd. Sec. 1, Ch. 30, L. 1979; amd. Sec. 1, Ch. 6, L. 1983.

1-2-109. When laws retroactive. No law contained in any of the statutes of Montana is retroactive unless expressly so declared.

History: En. Sec. 3, Pol. C. 1895; re-en. Sec. 3, Rev. C. 1907; amd. Sec. 1, Ch. 4, L. 1921; re-en. Sec. 3, R.C.M. 1921; Cal. Pol. C. Sec. 3; re-en. Sec. 3, R.C.M. 1935; R.C.M. 1947, 12-201.

Cross-References

Prohibition of ex post facto laws and laws impairing contracts, Art. II, sec. 31, Mont. Const.

Certain retrospective laws prohibited, Art. XIII, sec. 1, Mont. Const.

1-2-110. All statutes subject to repeal. Any statute may be repealed at any time except when it is otherwise provided therein. Persons acting under any statute are deemed to have acted in contemplation of this power of repeal.

History: En. Sec. 294, Pol. C. 1895; re-en. Sec. 121, Rev. C. 1907; re-en. Sec. 95, R.C.M. 1921; Cal. Pol. C. Sec. 326; re-en. Sec. 95, R.C.M. 1935; R.C.M. 1947, 43-512.

1-2-111. Effect of code on special, local, and private statutes. Nothing in this code affects any of the provisions of any special, local, or private statutes; but such statutes are recognized as continuing in force notwithstanding the provisions of this code, except so far as they have been repealed or affected by subsequent laws.

History: En. Sec. 18, Pol. C. 1895; re-en. Sec. 18, Rev. C. 1907; re-en. Sec. 18, R.C.M. 1921; Cal. Pol. C. Sec. 19; re-en. Sec. 18, R.C.M. 1935; R.C.M. 1947, 12-209.

Cross-References

Local and special legislation, Art. V, sec. 12, Mont. Const.

Local government ordinances, resolutions, and initiatives and referendums, Title 7, ch. 5, part 1.

1-2-112. Statutes imposing new local government duties. (1) Except as provided in this section, a law enacted by the legislature that requires a local government unit to perform an activity or provide a service or facility that requires the direct expenditure of additional funds must provide a specific means to finance the activity, service, or facility other than mill levies or the all-purpose mill levy. Any law that fails to provide a specific means to finance any activity, service, or facility is not effective until specific means of financing are provided by the legislature from state or federal funds.

(2) The legislature may fulfill the requirements of this section by providing for an increase in the existing authorized mill levies, the all-purpose mill levy, special mill levies, or the remission of money by the state to local governments. However, an increase in the existing authorized mill levies, the all-purpose mill levy, or any special mill levy must provide an amount necessary to finance the additional costs, and if financing is provided by remission of funds by the state,

the remission must bear a reasonable relationship to the actual cost of performing the activity or providing the service or facility.

(3) Subsequent legislation may not be considered to supersede or modify any provision of this section, whether by implication or otherwise, except to the extent that the legislation does so expressly.

(4) This section does not apply to:

(a) any law under which the required expenditure of additional local funds is an insubstantial amount that can be readily absorbed into the budget of an existing program. A required expenditure of the equivalent of approximately 0.1 mill or less levied on taxable property of the local government unit may be considered an insubstantial amount.

(b) a law necessary to implement the National Voter Registration Act of 1993, Public Law 103-31.

History: En. 43-517, 43-518 by Secs. 1, 2, Ch. 275, L. 1974; R.C.M. 1947, 43-517, 43-518; amd. Sec. 1, Ch. 217, L. 1979; amd. Sec. 1, Ch. 416, L. 1995; amd. Sec. 1, Ch. 246, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 246 in (1), at beginning, inserted exception clause; inserted (4)(b) regarding implementation of National Voter Registration Act; and made minor changes in style. Amendment effective April 11, 1997.

Cross-References

Local government taxes and finances generally, Title 7, ch. 6.

1-2-113. Statutes imposing new duties on a school district to provide means of financing. (1) Any law enacted by the legislature that requires a school district to perform an activity or provide a service or facility and that will require the direct expenditure of additional funds must provide a specific means to finance the activity, service, or facility other than the existing property tax mill levy. Any law that fails to provide a specific means to finance the service or facility is not effective until a specific means of financing meeting the requirements of subsection (2) is provided by the legislature.

(2) Financing must be by means of a remission of money by the state for the purpose of funding the activity, service, or facility. Financing must bear a reasonable relationship to the actual cost of performing the activity or providing the service or facility.

(3) Legislation passed and approved may not supersede or modify any provision of this section, except to the extent that the legislation expressly does so.

(4) This section does not apply to any law under which the required expenditure of additional funds by the board of trustees is an insubstantial amount that can be readily absorbed into the budget of an existing program.

History: En. Sec. 1, Ch. 596, L. 1981; amd. Sec. 2, Ch. 416, L. 1995.

Cross-References

Rules with substantial financial impact on school districts, 20-2-115.

School finances generally, Title 20, ch. 9.

1-2-114. Bill restriction. (1) A bill may not be introduced enacting a new law or amending an existing law to require a local government unit to perform an activity or provide a service or facility that requires a direct expenditure of additional funds without a specific means to finance the activity, service, or facility in violation of 1-2-112 or 1-2-113.

(2) The estimate of fiscal impact provided in accordance with 5-4-210 must be considered in determination of whether a bill is introduced in violation of subsection (1).

History: En. Sec. 3, Ch. 416, L. 1995.

Cross-References

Bills, Art. V, sec. 11, Mont. Const.; Title 5, ch. 4.

1-2-115. Enforcement. (1) A local government unit may use a remedy provided in subsection (2), (3), or (4) to prevent the application of a law enacted in violation of 1-2-112 or 1-2-113.

(2) A local government may, with the consent of a state agency charged with the implementation of the law, arbitrate the application of the law pursuant to the Uniform Arbitration Act.

(3) A local government unit may request a hearing before an administrative agency charged with the administration of the law. A hearing held pursuant to this section is a contested case proceeding pursuant to the Montana Administrative Procedure Act. The decision of the agency may be appealed in accordance with Title 2, chapter 4, part 7.

(4) A local government unit may bring a civil action in the district court of the county in which the local government unit is located to prevent the application of a law enacted in violation of 1-2-112 or 1-2-113. The state of Montana may be named as the respondent or defendant in an action brought pursuant to this section.

History: En. Sec. 5, Ch. 416, L. 1995.

Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

1-2-116. State agencies not to shift cost to local governments. (1) A state agency may not take any action prohibited by subsection (2) without authorization in state law.

(2) A state agency may not demand, bill, request, or otherwise require a local government to take any of the following actions or make the provision of a service to a local government that is required by state law to be provided to that government contingent on the local government taking any of the following actions:

(a) pay for all or part of the administrative costs of a program, activity, or undertaking required by state law to be carried out primarily by a state agency;

(b) pay for costs of computer hardware or software used in the operation of a state program, activity, or undertaking or pay for the application of either hardware or software in a state program;

(c) pay for forms required to be completed either by a local government or by third persons through a local government office and used by or filed with a state agency; or

(d) pay for the filing in a state office of forms required by state law to be completed by a local government.

(3) (a) A local government may refuse to pay for services billed or charged to it by a state agency in violation of this section. Upon refusal by the local government, the state agency may send to the local government a written notice of the program or activity for which the local government is billed, a detailed

statement of the amount of the bill or charge, and a citation to the legal authority requiring the local government to pay the bill or charge.

(b) Within 30 days of receipt of the notice required by this subsection (3), the local government shall pay the bill or charge or request a hearing before the state agency. Upon request, the state agency shall provide a hearing. If a local government fails to pay the bill or charge and fails to request a hearing, the state agency may initiate a contested case proceeding. Proceedings authorized by this subsection must be held in accordance with the provisions of the Montana Administrative Procedure Act governing contested cases. A decision of the state agency following opportunity for a hearing may be appealed to the district court as provided in 2-4-702.

(4) The remedy provided in subsection (3) is exclusive of any other remedy provided in law for a state agency claiming a right to recover an administrative cost from a local government and is exclusive of any other remedy provided in law for a local government refusing to pay a bill or charge of a state agency.

(5) This section does not apply to services provided by a state agency pursuant to a written or oral contract.

(6) The following definitions apply to this section:

(a) "Administrative cost" means the cost of administering a program, activity, or undertaking, including costs for salaries, wages, rent, heat, electricity, computer hardware, computer software, telephone, travel, equipment, supplies, or postage.

(b) "Local government" means a county, city, town, township, school district, or other district or local public entity with the authority to spend or receive public funds.

(c) "State agency" means a department, board, commission, office, bureau, or other public authority of state government.

History: En. Sec. 1, Ch. 496, L. 1995.

Part 2

Effect of Legislature's Actions

Part Cross-References

Effect of MCA, 1-11-103.

1-2-201. Statutes — effective date. (1) (a) Except as provided in subsection (1)(b) or (1)(c), every statute adopted after January 1, 1981, takes effect on the first day of October following its passage and approval unless a different time is prescribed in the enacting legislation.

(b) Every statute providing for appropriation by the legislature for public funds for a public purpose takes effect on the first day of July following its passage and approval unless a different time is prescribed in the enacting legislation.

(c) Every statute providing for the taxation of or the imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed in the enacting legislation.

(2) "Passage", as used in subsection (1), means the enactment into law of a bill, which has passed the legislature, either with or without the approval of the governor, as provided in the constitution.

History: (1)En. Sec. 3466, C. Civ. Proc. 1895; re-en. Sec. 8074, Rev. C. 1907; amd. Sec. 1, Ch. 92, L. 1921; re-en. Sec. 90, R.C.M. 1921; Cal. Pol. C. Sec. 323; re-en. Sec. 90, R.C.M. 1935; Sec. 43-507, R.C.M. 1947; (2)En. Sec. 3467, C. Civ. Proc. 1895; re-en. Sec. 8075, Rev. C. 1907; re-en. Sec. 91, R.C.M. 1921; re-en. Sec. 91, R.C.M. 1935; amd. Sec. 20, Ch. 100, L. 1973; amd. Sec. 9, Ch. 309, L. 1977; Sec. 43-508, R.C.M. 1947; R.C.M. 1947, 43-507, 43-508; amd. Sec. 2, Ch. 119, L. 1979; amd. Sec. 1, Ch. 466, L. 1981; amd. Sec. 1, Ch. 604, L. 1991; amd. Sec. 1, Ch. 18, L. 1995.

1-2-202. Joint resolutions — effective date. Every joint resolution, unless a different time is prescribed therein, takes effect from its passage.

History: En. Sec. 291, Pol. C. 1895; re-en. Sec. 118, Rev. C. 1907; re-en. Sec. 92, R.C.M. 1921; Cal. Pol. C. Sec. 324; re-en. Sec. 92, R.C.M. 1935; R.C.M. 1947, 43-509.

1-2-203. Effect of amendment of statute. Where a section or a part of a statute is amended, it is not to be considered as having been repealed and reenacted in the amended form, but the portions which are not altered are to be considered as having been the law from the time when they were enacted, and the new provisions are to be considered as having been enacted at the time of the amendment.

History: En. Sec. 292, Pol. C. 1895; re-en. Sec. 119, Rev. C. 1907; re-en. Sec. 93, R.C.M. 1921; Cal. Pol. C. Sec. 325; re-en. Sec. 93, R.C.M. 1935; R.C.M. 1947, 43-510.

1-2-204. Amendment of repealed act void. An act amending a section of an act repealed is void.

History: En. Sec. 297, Pol. C. 1895; re-en. Sec. 124, Rev. C. 1907; re-en. Sec. 98, R.C.M. 1921; Cal. Pol. C. Sec. 330; re-en. Sec. 98, R.C.M. 1935; R.C.M. 1947, 43-515.

1-2-205. Repeal of law creating criminal offense. The repeal of any law creating a criminal offense does not constitute a bar to an indictment or information and the punishment of an act already committed in violation of the law so repealed unless the intention to bar such indictment or information and punishment is expressly declared in the repealing act.

History: En. Sec. 8, p. 390, Cod. Stat. 1871; re-en. Sec. 152, 5th Div. Rev. Stat. 1879; re-en. Sec. 209, 5th Div. Comp. Stat. 1887; amd. Sec. 296, Pol. C. 1895; re-en. Sec. 123, Rev. C. 1907; re-en. Sec. 97, R.C.M. 1921; Cal. Pol. C. Sec. 329; re-en. Sec. 97, R.C.M. 1935; R.C.M. 1947, 43-514.

Cross-References

Application of Criminal Code of 1973 to offenses committed before and after Code's enactment, 45-1-103.

1-2-206. Repeal of repealed statute. The repeal of any statute or part of a statute heretofore repealed must not be so construed as a declaration, express or by implication, that such statute or part of a statute has been in force at any time subsequent to such first repeal.

History: En. Sec. 5180, Pol. C. 1895; re-en. Sec. 3560, Rev. C. 1907; re-en. Sec. 5526, R.C.M. 1921; Cal. Pol. C. Sec. 4504; re-en. Sec. 5526, R.C.M. 1935; R.C.M. 1947, 12-213.

1-2-207. Repeal of repealing act — no revival. No act or part of an act repealed by another act of the legislature is revived by the repeal of the repealing act without express words reviving such repealed act or part of an act.

History: En. Sec. 2, p. 390, Cod. Stat. 1871; re-en. Sec. 146, 5th Div. Rev. Stat. 1879; re-en. Sec. 203, 5th Div. Comp. Stat. 1887; amd. Sec. 295, Pol. C. 1895; re-en. Sec. 122, Rev. C. 1907; re-en. Sec. 96, R.C.M. 1921; Cal. Pol. C. Sec. 328; re-en. Sec. 96, R.C.M. 1935; R.C.M. 1947, 43-513.

1-2-208. Provisions of law not codified in Montana Code Annotated because redundant. (1) Whenever a provision of law codified in the Montana Code Annotated is amended in such a way that it conflicts with a provision of law that was not codified in the Montana Code Annotated because such uncodified provision was redundant with such codified provision, the codified provision, as amended, governs and must be given effect over the uncodified provision.

(2) Repeal or deletion of a provision of the Montana Code Annotated also repeals or deletes a provision of law that was not codified in the Montana Code Annotated because it was redundant with the repealed or deleted provision of the Montana Code Annotated, whether or not the repealed or deleted provision of the Montana Code Annotated was amended prior to its repeal or deletion.

History: En. Sec. 1, Ch. 79, L. 1985.

Cross-References

Codification of laws, 1-11-204.

CHAPTER 3

MAXIMS OF JURISPRUDENCE

Part 1 — General Provisions

1-3-101. Purpose of maxims.

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1-3-231. Principal.
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Part 1
General Provisions

1-3-101. Purpose of maxims. The maxims of jurisprudence set forth in part 2 of this chapter are intended not to qualify any of the other provisions of this code but to aid in their just application.

History: En. Sec. 4600, Civ. C. 1895; re-en. Sec. 6177, Rev. C. 1907; re-en. Sec. 8738, R.C.M. 1921; Cal. Civ. C. Sec. 3509; Field Civ. C. Sec. 1964; re-en. Sec. 8738, R.C.M. 1935; R.C.M. 1947, 49-101.

Part 2
Text of Maxims

1-3-201. Obsolete reason, obsolete rule. When the reason of a rule ceases, so should the rule itself.

History: En. Sec. 4601, Civ. C. 1895; re-en. Sec. 6178, Rev. C. 1907; re-en. Sec. 8739, R.C.M. 1921; Cal. Civ. C. Sec. 3510; Field Civ. C. Sec. 1965; re-en. Sec. 8739, R.C.M. 1935; R.C.M. 1947, 49-102.

1-3-202. Same reason, same rule. Where the reason is the same, the rule should be the same.

History: En. Sec. 4602, Civ. C. 1895; re-en. Sec. 6179, Rev. C. 1907; re-en. Sec. 8740, R.C.M. 1921; Cal. Civ. C. Sec. 3511; Field Civ. C. Sec. 1966; re-en. Sec. 8740, R.C.M. 1935; R.C.M. 1947, 49-103.

1-3-203. Change in purpose. One must not change his purpose to the injury of another.

History: En. Sec. 4603, Civ. C. 1895; re-en. Sec. 6180, Rev. C. 1907; re-en. Sec. 8741, R.C.M. 1921; Cal. Civ. C. Sec. 3512; Field Civ. C. Sec. 1967; re-en. Sec. 8741, R.C.M. 1935; R.C.M. 1947, 49-104.

1-3-204. Waiver of benefit of a law. Anyone may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement.

History: En. Sec. 4604, Civ. C. 1895; re-en. Sec. 6181, Rev. C. 1907; re-en. Sec. 8742, R.C.M. 1921; Cal. Civ. C. Sec. 3513; Field Civ. C. Sec. 1968; re-en. Sec. 8742, R.C.M. 1935; R.C.M. 1947, 49-105.

Cross-References

Contracts that violate policy of law, 28-2-702.

1-3-205. Limit on rights. One must so use his own rights as not to infringe upon the rights of another.

History: En. Sec. 4605, Civ. C. 1895; re-en. Sec. 6182, Rev. C. 1907; re-en. Sec. 8743, R.C.M. 1921; Cal. Civ. C. Sec. 3514; Field Civ. C. Sec. 1969; re-en. Sec. 8743, R.C.M. 1935; R.C.M. 1947, 49-106.

1-3-206. Consent. He who consents to an act is not wronged by it.

History: En. Sec. 4606, Civ. C. 1895; re-en. Sec. 6183, Rev. C. 1907; re-en. Sec. 8744, R.C.M. 1921; Cal. Civ. C. Sec. 3515; Field Civ. C. Sec. 1970; re-en. Sec. 8744, R.C.M. 1935; R.C.M. 1947, 49-107.

Cross-References

Consent in general — contracts, Title 28, ch. 2, part 3.

Crimes — consent as defense, 45-2-211.

1-3-207. Acquiescence. Acquiescence in error takes away the right of objecting to it.

History: **En. Sec. 4607, Civ. C. 1895; re-en. Sec. 6184, Rev. C. 1907; re-en. Sec. 8745, R.C.M. 1921; Cal. Civ. C. Sec. 3516; Field Civ. C. Sec. 1971; re-en. Sec. 8745, R.C.M. 1935; R.C.M. 1947, 49-108.**

1-3-208. Own wrong — no advantage. No one can take advantage of his own wrong.

History: **En. Sec. 4608; Civ. C. 1895; re-en. Sec. 6185, Rev. C. 1907; re-en. Sec. 8746, R.C.M. 1921; Cal. Civ. C. Sec. 3517; Field Civ. C. Sec. 1972; re-en. Sec. 8746, R.C.M. 1935; R.C.M. 1947, 49-109.**

1-3-209. Fraudulent dispossession. He who has fraudulently dispossessed himself of a thing may be treated as if he still had possession.

History: **En. Sec. 4609, Civ. C. 1895; re-en. Sec. 6186, Rev. C. 1907; re-en. Sec. 8747, R.C.M. 1921; Cal. Civ. C. Sec. 3518; Field Civ. C. Sec. 1973; re-en. Sec. 8747, R.C.M. 1935; R.C.M. 1947, 49-110.**

Cross-References

Types of fraud, 28-2-404 through 28-2-406.

1-3-210. Acts on one's behalf. He who can and does not forbid that which is done on his behalf is deemed to have bidden it.

History: **En. Sec. 4610, Civ. C. 1895; re-en. Sec. 6187, Rev. C. 1907; re-en. Sec. 8748, R.C.M. 1921; Cal. Civ. C. Sec. 3519; Field Civ. C. Sec. 1974; re-en. Sec. 8748, R.C.M. 1935; R.C.M. 1947, 49-111.**

Cross-References

Rights and liabilities of agent that accrue to principal, 28-10-601.

1-3-211. Acts of others. No one should suffer for the act of another.

History: **En. Sec. 4611, Civ. C. 1895; re-en. Sec. 6188, Rev. C. 1907; re-en. Sec. 8749, R.C.M. 1921; Cal. Civ. C. Sec. 3520; Field Civ. C. Sec. 1975; re-en. Sec. 8749, R.C.M. 1935; R.C.M. 1947, 49-112.**

1-3-212. Benefit — burden. He who takes the benefit must bear the burden.

History: **En. Sec. 4612, Civ. C. 1895; re-en. Sec. 6189, Rev. C. 1907; re-en. Sec. 8750, R.C.M. 1921; Cal. Civ. C. Sec. 3521; Field Civ. C. Sec. 1976; re-en. Sec. 8750, R.C.M. 1935; R.C.M. 1947, 49-113.**

1-3-213. Grant includes essentials. One who grants a thing is presumed to grant also whatever is essential to its use.

History: **En. Sec. 4613, Civ. C. 1895; re-en. Sec. 6190, Rev. C. 1907; re-en. Sec. 8751, R.C.M. 1921; Cal. Civ. C. Sec. 3522; Field Civ. C. Sec. 1977; re-en. Sec. 8751, R.C.M. 1935; R.C.M. 1947, 49-114.**

1-3-214. Wrong — remedy. For every wrong there is a remedy.

History: **En. Sec. 4614, Civ. C. 1895; re-en. Sec. 6191, Rev. C. 1907; re-en. Sec. 8752, R.C.M. 1921; Cal. Civ. C. Sec. 3523; Field Civ. C. Sec. 1978; re-en. Sec. 8752, R.C.M. 1935; R.C.M. 1947, 49-115.**

Cross-References

Remedies, Title 27.

1-3-215. Equal in right or wrong. Between those who are equally in the right or equally in the wrong, the law does not interpose.

History: En. Sec. 4615, Civ. C. 1895; re-en. Sec. 6192, Rev. C. 1907; re-en. Sec. 8753, R.C.M. 1921; Cal. Civ. C. Sec. 3524; Field Civ. C. Sec. 1979; re-en. Sec. 8753, R.C.M. 1935; R.C.M. 1947, 49-116.

1-3-216. Preference to earliest. Between rights otherwise equal, the earliest is preferred.

History: En. Sec. 4616, Civ. C. 1895; re-en. Sec. 6193, Rev. C. 1907; re-en. Sec. 8754, R.C.M. 1921; Cal. Civ. C. Sec. 3525; Field Civ. C. Sec. 1980; re-en. Sec. 8754, R.C.M. 1935; R.C.M. 1947, 49-117.

Cross-References

Water use — first in time is first in right, 85-2-401.

1-3-217. Beyond man's control. No man is responsible for that which no man can control.

History: En. Sec. 4617, Civ. C. 1895; re-en. Sec. 6194, Rev. C. 1907; re-en. Sec. 8755, R.C.M. 1921; Cal. Civ. C. Sec. 3526; Field Civ. C. Sec. 1981; re-en. Sec. 8755, R.C.M. 1935; R.C.M. 1947, 49-118.

1-3-218. Vigilance. The law helps the vigilant before those who sleep on their rights.

History: En. Sec. 4618, Civ. C. 1895; re-en. Sec. 6195, Rev. C. 1907; re-en. Sec. 8756, R.C.M. 1921; Cal. Civ. C. Sec. 3527; Field Civ. C. Sec. 1982; re-en. Sec. 8756, R.C.M. 1935; R.C.M. 1947, 49-119.

1-3-219. Form and substance. The law respects form less than substance.

History: En. Sec. 4619, Civ. C. 1895; re-en. Sec. 6196, Rev. C. 1907; re-en. Sec. 8757, R.C.M. 1921; Cal. Civ. C. Sec. 3528; Field Civ. C. Sec. 1983; re-en. Sec. 8757, R.C.M. 1935; R.C.M. 1947, 49-120.

1-3-220. What ought to have been done. That which ought to have been done is to be regarded as done, in favor of him to whom and against him from whom performance is due.

History: En. Sec. 4620, Civ. C. 1895; re-en. Sec. 6197, Rev. C. 1907; re-en. Sec. 8758, R.C.M. 1921; Cal. Civ. C. Sec. 3529; Field Civ. C. Sec. 1984; re-en. Sec. 8758, R.C.M. 1935; R.C.M. 1947, 49-121.

1-3-221. Apparent nonexistence. That which does not appear to exist is to be regarded as if it did not exist.

History: En. Sec. 4621, Civ. C. 1895; re-en. Sec. 6198, Rev. C. 1907; re-en. Sec. 8759, R.C.M. 1921; Cal. Civ. C. Sec. 3530; Field Civ. C. Sec. 1985; re-en. Sec. 8759, R.C.M. 1935; R.C.M. 1947, 49-122.

1-3-222. Impossibilities. The law never requires impossibilities.

History: En. Sec. 4622, Civ. C. 1895; re-en. Sec. 6199, Rev. C. 1907; re-en. Sec. 8760, R.C.M. 1921; Cal. Civ. C. Sec. 3531; Field Civ. C. Sec. 1986; re-en. Sec. 8760, R.C.M. 1935; R.C.M. 1947, 49-123.

1-3-223. Idle acts. The law neither does nor requires idle acts.

History: En. Sec. 4623, Civ. C. 1895; re-en. Sec. 6200, Rev. C. 1907; re-en. Sec. 8761, R.C.M. 1921; Cal. Civ. C. Sec. 3532; Field Civ. C. Sec. 1987; re-en. Sec. 8761, R.C.M. 1935; R.C.M. 1947, 49-124.

1-3-224. Trifles. The law disregards trifles.

History: En. Sec. 4624, Civ. C. 1895; re-en. Sec. 6201, Rev. C. 1907; re-en. Sec. 8762, R.C.M. 1921; Cal. Civ. C. Sec. 3533; Field Civ. C. Sec. 1988; re-en. Sec. 8762, R.C.M. 1935; R.C.M. 1947, 49-125.

1-3-225. Particular versus general. Particular expressions qualify those which are general.

History: En. Sec. 4625, Civ. C. 1895; re-en. Sec. 6202, Rev. C. 1907; re-en. Sec. 8763, R.C.M. 1921; Cal. Civ. C. Sec. 3534; Field Civ. C. Sec. 1989; re-en. Sec. 8763, R.C.M. 1935; R.C.M. 1947, 49-126.

Cross-References

Intention of Legislature — particular and general provisions, 1-2-102.

Intention of parties — particular and general provisions, 1-4-103.

1-3-226. Preference for contemporaneity. Contemporaneous exposition is in general the best.

History: En. Sec. 4626, Civ. C. 1895; re-en. Sec. 6203, Rev. C. 1907; re-en. Sec. 8764, R.C.M. 1921; Cal. Civ. C. Sec. 3535; Field Civ. C. Sec. 1990; re-en. Sec. 8764, R.C.M. 1935; R.C.M. 1947, 49-127.

1-3-227. Smaller within larger. The greater contains the less.

History: En. Sec. 4627, Civ. C. 1895; re-en. Sec. 6204, Rev. C. 1907; re-en. Sec. 8765, R.C.M. 1921; Cal. Civ. C. Sec. 3536; Field Civ. C. Sec. 1991; re-en. Sec. 8765, R.C.M. 1935; R.C.M. 1947, 49-128.

1-3-228. Superfluity. Superfluity does not vitiate.

History: En. Sec. 4628, Civ. C. 1895; re-en. Sec. 6205, Rev. C. 1907; re-en. Sec. 8766, R.C.M. 1921; Cal. Civ. C. Sec. 3537; Field Civ. C. Sec. 1992; re-en. Sec. 8766, R.C.M. 1935; R.C.M. 1947, 49-129.

1-3-229. Certainty. That is certain which can be made certain.

History: En. Sec. 4629, Civ. C. 1895; re-en. Sec. 6206, Rev. C. 1907; re-en. Sec. 8767, R.C.M. 1921; Cal. Civ. C. Sec. 3538; Field Civ. C. Sec. 1993; re-en. Sec. 8767, R.C.M. 1935; R.C.M. 1947, 49-130.

1-3-230. Void act. Time does not confirm a void act.

History: En. Sec. 4630, Civ. C. 1895; re-en. Sec. 6207, Rev. C. 1907; re-en. Sec. 8768, R.C.M. 1921; Cal. Civ. C. Sec. 3539; Field Civ. C. Sec. 1994; re-en. Sec. 8768, R.C.M. 1935; R.C.M. 1947, 49-131.

1-3-231. Principal. The incident follows the principal and not the principal the incident.

History: En. Sec. 4631, Civ. C. 1895; re-en. Sec. 6208, Rev. C. 1907; re-en. Sec. 8769, R.C.M. 1921; Cal. Civ. C. Sec. 3540; Field Civ. C. Sec. 1995; re-en. Sec. 8769, R.C.M. 1935; R.C.M. 1947, 49-132.

1-3-232. Avoiding voidness. An interpretation which gives effect is preferred to one which makes void.

History: En. Sec. 4632, Civ. C. 1895; re-en. Sec. 6209, Rev. C. 1907; re-en. Sec. 8770, R.C.M. 1921; Cal. Civ. C. Sec. 3541; Field Civ. C. Sec. 1996; re-en. Sec. 8770, R.C.M. 1935; R.C.M. 1947, 49-133.

1-3-233. Reasonableness. Interpretation must be reasonable.

History: En. Sec. 4633, Civ. C. 1895; re-en. Sec. 6210, Rev. C. 1907; re-en. Sec. 8771, R.C.M. 1921; Cal. Civ. C. Sec. 3542; Field Civ. C. Sec. 1997; re-en. Sec. 8771, R.C.M. 1935; R.C.M. 1947, 49-134.

1-3-234. Third parties — who suffers. Where one of two innocent persons must suffer by the act of a third, he by whose negligence it happened must be the sufferer.

History: En. Sec. 4634, Civ. C. 1895; re-en. Sec. 6211, Rev. C. 1907; re-en. Sec. 8772, R.C.M. 1921; Cal. Civ. C. Sec. 3543; Field Civ. C. Sec. 1998; re-en. Sec. 8772, R.C.M. 1935; R.C.M. 1947, 49-135.

Cross-References

Liability for negligence, 27-1-701.

CHAPTER 4

INTERPRETATION OF INSTRUMENTS

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Part 1

General Provisions

Part Cross-References

Plain Language in Contracts Act, Title 30, ch. 14, part 11.

1-4-101. Role of the judge — preference to construction giving each provision meaning. In the construction of an instrument, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.

History: En. Sec. 612, p. 198, L. 1877; re-en. Sec. 612, 1st Div. Rev. Stat. 1879; re-en. Sec. 630, 1st Div. Comp. Stat. 1887; re-en. Sec. 3134, C. Civ. Proc. 1895; re-en. Sec. 7875, Rev. C. 1907; re-en. Sec. 10519, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1858; re-en. Sec. 10519, R.C.M. 1935; R.C.M. 1947, 93-401-15(part).

1-4-102. Consideration of circumstances surrounding execution. For the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject of the instrument and of the parties to it, may also be shown so that the judge be placed in the position of those whose language he is to interpret.

History: En. Sec. 614, p. 199, L. 1877; re-en. Sec. 614, 1st Div. Rev. Stat. 1879; re-en. Sec. 632, 1st Div. Comp. Stat. 1887; re-en. Sec. 3136, C. Civ. Proc. 1895; re-en. Sec. 7877, Rev. C. 1907; re-en. Sec. 10521, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1860; re-en. Sec. 10521, R.C.M. 1935; R.C.M. 1947, 93-401-17.

Cross-References

When extrinsic evidence concerning written agreement may be considered, 28-2-905.

Reference to circumstances permissible in determining intention, 28-3-402.

Final written expression — parol or extrinsic evidence, 30-2-202.

Extrinsic evidence not to be considered in construction of deed — exceptions, 70-20-202.

1-4-103. Intention of the parties — particular and general provisions. In the construction of an instrument, the intention of the parties is to be pursued if possible. When a general and particular provision are inconsistent, the latter is paramount to the former so a particular intent will control a general one that is inconsistent with it.

History: En. Sec. 613, p. 198, L. 1877; re-en. Sec. 613, 1st Div. Rev. Stat. 1879; re-en. Sec. 631, 1st Div. Comp. Stat. 1887; re-en. Sec. 3135, C. Civ. Proc. 1895; re-en. Sec. 7876, Rev. C. 1907; re-en. Sec. 10520, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1859; re-en. Sec. 10520, R.C.M. 1935; R.C.M. 1947, 93-401-16(part).

Cross-References

Particular versus general, 1-3-225.

Interpretation giving effect to contract favored, 28-3-201.

Contracts — intention of parties, Title 28, ch. 3, parts 3 and 4.

1-4-104. Preference to construction favoring natural right. When an instrument is equally susceptible of two interpretations, one in favor of natural right and the other against it, the former is to be adopted.

History: En. Sec. 620, p. 200, L. 1877; re-en. Sec. 620, 1st Div. Rev. Stat. 1879; re-en. Sec. 638, 1st Div. Comp. Stat. 1887; re-en. Sec. 3142, C. Civ. Proc. 1895; re-en. Sec. 7883, Rev. C. 1907; re-en. Sec. 10527, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1866; re-en. Sec. 10527, R.C.M. 1935; R.C.M. 1947, 93-401-23(part).

1-4-105. Written words versus words in printed form. When an instrument consists partly of written words and partly of a printed form and the two are inconsistent, the former control the latter.

History: En. Sec. 616, p. 199, L. 1877; re-en. Sec. 616, 1st Div. Rev. Stat. 1879; re-en. Sec. 634, 1st Div. Comp. Stat. 1887; re-en. Sec. 3138, C. Civ. Proc. 1895; re-en. Sec. 7879, Rev. C. 1907; re-en. Sec. 10523, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1862; re-en. Sec. 10523, R.C.M. 1935; R.C.M. 1947, 93-401-19.

Cross-References

Written or original terms to control printed terms, 28-3-205.

1-4-106. Interpretation of language according to usage in place of execution. The language of a writing is to be interpreted according to the meaning it bears in the place of its execution unless the parties have reference to a different place.

History: En. Sec. 611, p. 198, L. 1877; re-en. Sec. 611, 1st Div. Rev. Stat. 1879; re-en. Sec. 629, 1st Div. Comp. Stat. 1887; re-en. Sec. 3133, C. Civ. Proc. 1895; re-en. Sec. 7874, Rev. C. 1907; re-en. Sec. 10518, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1857; re-en. Sec. 10518, R.C.M. 1935; R.C.M. 1947, 93-401-14.

Cross-References

What law and usage to govern interpretation, 28-3-102.

Course of dealing and usage of trade, 30-1-205.

1-4-107. Construction of terms. The terms of a writing are presumed to have been used in their primary and general acceptation, but evidence is nevertheless admissible that they have a local, technical, or otherwise peculiar signification and were so used and understood in the particular instance, in which case the agreement must be construed accordingly.

History: En. Sec. 615, p. 199, L. 1877; re-en. Sec. 615, 1st Div. Rev. Stat. 1879; re-en. Sec. 633, 1st Div. Comp. Stat. 1887; re-en. Sec. 3137, C. Civ. Proc. 1895; re-en. Sec. 7878,

Rev. C. 1907; re-en. Sec. 10522, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1861; re-en. Sec. 10522, R.C.M. 1935; R.C.M. 1947, 93-401-18.

Cross-References

Contracts — interpretation of words, Title 28, ch. 3, part 5.

1-4-108. Construction of the terms of a notice. A written notice, as well as every other writing, is to be construed according to the ordinary acceptation of its terms. Thus, a notice to the drawers or endorsers of a draft or promissory note that it has been protested for want of acceptance or payment must be held to import that any necessary presentment for acceptance or payment has been made, that the instrument has been dishonored, and that the holder looks for payment to the person to whom the notice is given.

History: En. Sec. 619, p. 200, L. 1877; re-en. Sec. 619, 1st Div. Rev. Stat. 1879; re-en. Sec. 637, 1st Div. Comp. Stat. 1887; re-en. Sec. 3141, C. Civ. Proc. 1895; re-en. Sec. 7882, Rev. C. 1907; re-en. Sec. 10526, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1865; re-en. Sec. 10526, R.C.M. 1935; amd. Sec. 11-170, Ch. 264, L. 1963; R.C.M. 1947, 93-401-22.

Cross-References

Negotiable instruments — presentment, 30-3-504.

Notice of dishonor, 30-3-508.

1-4-109. Superseded. Sup. Ct. Ord. No. 12729, July 10, 1979.

History: En. Sec. 624, p. 201, L. 1877; re-en. Sec. 624, 1st Div. Rev. Stat. 1879; re-en. Sec. 642, 1st Div. Comp. Stat. 1887; re-en. Sec. 3146, C. Civ. Proc. 1895; re-en. Sec. 7887, Rev. C. 1907; re-en. Sec. 10531, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1870; re-en. Sec. 10531, R.C.M. 1935; R.C.M. 1947, 93-401-27(part).

1-4-110. Hydrocarbons distinguished. When used in any instrument, unless the clear and express terms of the instrument provide otherwise, the terms "coal", "gas", and "oil" must be construed as defined in 82-1-111.

History: En. Sec. 2, Ch. 379, L. 1993.

Part 2
Seals

1-4-201. Seal defined. (1) A "seal" is a particular sign made to attest in the most formal manner the execution of an instrument.

(2) A public seal in this state is a stamp or impression made by a public officer with an instrument provided by law to attest the execution of an official or public document. A private seal may be made in the same manner by any instrument.

History: (1)En. Sec. 3221, C. Civ. Proc. 1895; re-en. Sec. 7934, Rev. C. 1907; re-en. Sec. 10578, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1930; re-en. Sec. 10578, R.C.M. 1935; Sec. 93-1101-2, R.C.M. 1947; (2)En. Sec. 3222, C. Civ. Proc. 1895; re-en. Sec. 7935, Rev. C. 1907; re-en. Sec. 10579, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1931; re-en. Sec. 10579, R.C.M. 1935; Sec. 93-1101-3, R.C.M. 1947; R.C.M. 1947, 93-1101-2, 93-1101-3(part).

1-4-202. Manner of making a seal. The seal of a court or public officer, when required by law to be affixed to any instrument, may be affixed by a stamp or impression of the seal upon the paper, or other material on which such instrument is written, alone or upon any substance attached to the paper or other material capable of receiving a visible stamp or impression. The seal of a private person may be made in like manner, by the scroll of a pen, or by writing the word "seal" against the signature of the writer.

History: Ap. p. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; Sec. 19-103, R.C.M. 1947; Ap. p. Sec. 2189, Civ. C. 1895; re-en. Sec. 5021, Rev. C. 1907; re-en. Sec. 7523, R.C.M. 1921; Cal. Civ. C. Sec. 1628; Based on Field Civ. C. Sec. 798; re-en. Sec. 7523, R.C.M. 1935; Sec. 13-610, R.C.M. 1947; Ap. p. Sec. 3222, C. Civ. Proc. 1895; re-en. Sec. 7935, Rev. C. 1907; re-en. Sec. 10579, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1931; re-en. Sec. 10579, R.C.M. 1935; Sec. 93-1101-3, R.C.M. 1947 R.C.M. 1947, 13-610, 19-103(25), 93-1101-3(part); amd. Sec. 1, Ch. 6, L. 1985.

1-4-203. Acceptance of foreign seals. A scroll or other sign made in a sister state or foreign country and there recognized as a seal must be so regarded in this state.

History: En. Sec. 3222, C. Civ. Proc. 1895; re-en. Sec. 7935, Rev. C. 1907; re-en. Sec. 10579, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1931; re-en. Sec. 10579, R.C.M. 1935; R.C.M. 1947, 93-1101-3(part).

1-4-204. Distinctions between sealed and unsealed abolished. All distinctions between sealed and unsealed instruments are abolished.

History: En. Sec. 2190, Civ. C. 1895; re-en. Sec. 5022, Rev. C. 1907; re-en. Sec. 7524, R.C.M. 1921; Cal. Civ. C. Sec. 1629; re-en. Sec. 7524, R.C.M. 1935; R.C.M. 1947, 13-611.

1-4-205. Effect of instruments without a seal. All instruments shall be as effectual without a seal as if the same had a seal attached thereto, but this section shall not apply to municipal or other corporations which by law are required to attest their action under seal.

History: En. Sec. 2191, Civ. C. 1895; re-en. Sec. 5023, Rev. C. 1907; re-en. Sec. 7525, R.C.M. 1921; re-en. Sec. 7525, R.C.M. 1935; R.C.M. 1947, 13-612.

1-4-206. Change in writing under seal by unsealed writing. There must be no difference in this state between sealed and unsealed writings. A writing under seal may therefore be changed or altogether discharged by a writing not under seal.

History: En. Sec. 3223, C. Civ. Proc. 1895; re-en. Sec. 7936, Rev. C. 1907; re-en. Sec. 10580, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1932; re-en. Sec. 10580, R.C.M. 1935; R.C.M. 1947, 93-1101-4.

1-4-207. Compromise or settlement of a debt by unsealed writing. An agreement in writing without a seal for the compromise or settlement of a debt is as obligatory as if a seal were affixed.

History: En. Sec. 3225, C. Civ. Proc. 1895; re-en. Sec. 7938, Rev. C. 1907; re-en. Sec. 10582, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1934; re-en. Sec. 10582, R.C.M. 1935; R.C.M. 1947, 93-1101-6.

CHAPTER 5

PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS NOTARIES PUBLIC

Part 1 — General Provisions—Proof and Acknowledgment
(Repealed. Sec. 22, Ch. 192, L. 1993)

Part 2 — Acknowledgment
(Repealed)

1-5-201 through 1-5-204. Repealed.
1-5-205. Repealed.

1-5-206. Repealed.
1-5-207. Repealed.
1-5-208. Repealed.

Part 3 — Proof of Execution

1-5-301. Who may prove execution of instrument.
1-5-302. When execution may be proved by handwriting.
1-5-303. Facts which must be shown when offering proof of handwriting.
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1-5-415. Jurisdiction.
1-5-416. Powers and duties.
1-5-417. Authority of notaries who are stockholders, officers, or employees of corporations.
1-5-418. Fees of notaries.
1-5-419. Transfer of records upon termination of office.
1-5-420. Powers and duties of clerk with whom records deposited.

Part 5 — Commissioners of Deeds
(Repealed. Sec. 14, Ch. 119, L. 1979)

Part 6 — Notarial Acts

1-5-601. Short title.
1-5-602. Definitions.
1-5-603. Notarial acts.
1-5-604. Notarial acts in this state.
1-5-605. Reciprocity of notarial acts.
1-5-606. Notarial acts in other jurisdictions of the United States.
1-5-607. Notarial acts under federal authority.
1-5-608. Foreign notarial acts.
1-5-609. Certificate of notarial acts.
1-5-610. Short forms.
1-5-611. Uniformity of application and construction.

Part 1

General Provisions — Proof and Acknowledgment (Repealed. Sec. 22, Ch. 192, L. 1993)

Part Compiler's Comments

Histories of Repealed Sections:

1-5-101. (1)En. Sec. 1600, Civ. C. 1895; re-en. Sec. 4654, Rev. C. 1907; re-en. Sec. 6905, R.C.M. 1921; Cal. Civ. C. Sec. 1180; Based on Field Civ. C. Sec. 516; re-en. Sec. 6905, R.C.M. 1935; Sec. 39-101, R.C.M. 1947; (2)En. Sec. 1601, Civ. C. 1895; re-en. Sec. 4655, Rev. C. 1907; amd. Sec. 1, Ch. 10, L. 1913; re-en. Sec. 6906, R.C.M. 1921; Cal. Civ. C. Sec. 1181; Based on Field Civ. C. Sec. 517; re-en. Sec. 6906, R.C.M. 1935; Sec. 39-102, R.C.M. 1947; R.C.M. 1947, 39-101, 39-102; amd. Sec. 1, Ch. 242, L. 1989.

1-5-102. En. Sec. 1602, Civ. C. 1895; re-en. Sec. 4656, Rev. C. 1907; re-en. Sec. 6907, R.C.M. 1921; Cal. Civ. C. Sec. 1182; Based on Field Civ. C. Sec. 518; re-en. Sec. 6907, R.C.M. 1935; R.C.M. 1947, 39-103; amd. Sec. 3, Ch. 119, L. 1979; amd. Sec. 2, Ch. 242, L. 1989.

1-5-103. En. Sec. 1603, Civ. C. 1895; re-en. Sec. 4657, Rev. C. 1907; re-en. Sec. 6908, R.C.M. 1921; Cal. Civ. C. Sec. 1183; re-en. Sec. 6908, R.C.M. 1935; R.C.M. 1947, 39-104.

1-5-104. En. Sec. 1604, Civ. C. 1895; re-en. Sec. 4658, Rev. C. 1907; re-en. Sec. 6909, R.C.M. 1921; Cal. Civ. C. Sec. 1184; re-en. Sec. 6909, R.C.M. 1935; R.C.M. 1947, 39-105.

1-5-105. En. Sec. 1, Ch. 117, L. 1945; R.C.M. 1947, 39-106; amd. Sec. 4, Ch. 119, L. 1979.

1-5-106. En. Sec. 1613, Civ. C. 1895; re-en. Sec. 4667, Rev. C. 1907; re-en. Sec. 6918, R.C.M. 1921; Cal. Civ. C. Sec. 1193; re-en. Sec. 6918, R.C.M. 1935; R.C.M. 1947, 39-115.

1-5-107. En. Sec. 1614, Civ. C. 1895; re-en. Sec. 4668, Rev. C. 1907; re-en. Sec. 6919, R.C.M. 1921; Cal. Civ. C. Sec. 1194; re-en. Sec. 6919, R.C.M. 1935; R.C.M. 1947, 39-116.

1-5-108. En. Sec. 1622, Civ. C. 1895; re-en. Sec. 4676, Rev. C. 1907; re-en. Sec. 6927, R.C.M. 1921; Cal. Civ. C. Sec. 1202; re-en. Sec. 6927, R.C.M. 1935; R.C.M. 1947, 39-124.

1-5-109. En. Sec. 1623, Civ. C. 1895; re-en. Sec. 4677, Rev. C. 1907; re-en. Sec. 6928, R.C.M. 1921; Cal. Civ. C. Sec. 1203; re-en. Sec. 6928, R.C.M. 1935; R.C.M. 1947, 39-125.

1-5-110. En. Sec. 1624, Civ. C. 1895; re-en. Sec. 4678, Rev. C. 1907; re-en. Sec. 6929, R.C.M. 1921; Cal. Civ. C. Sec. 1204; re-en. Sec. 6929, R.C.M. 1935; R.C.M. 1947, 39-126.

Part 2

Acknowledgment (Repealed)

1-5-201 through 1-5-204. Repealed. Sec. 22, Ch. 192, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

1-5-201. En. Sec. 1605, Civ. C. 1895; re-en. Sec. 4659, Rev. C. 1907; amd. Sec. 1, Ch. 2, L. 1913; re-en. Sec. 6910, R.C.M. 1921; Cal. Civ. C. Sec. 1185; re-en. Sec. 6910, R.C.M. 1935; amd. Sec. 1, Ch. 171, L. 1937; amd. Sec. 1, Ch. 12, L. 1974; R.C.M. 1947, 39-107.

1-5-202. En. Sec. 1608, Civ. C. 1895; re-en. Sec. 4662, Rev. C. 1907; re-en. Sec. 6913, R.C.M. 1921; Cal. Civ. C. Sec. 1188; re-en. Sec. 6913, R.C.M. 1935; R.C.M. 1947, 39-110.

1-5-203. En. Sec. 1609, Civ. C. 1895; re-en. Sec. 4663, Rev. C. 1907; re-en. Sec. 6914, R.C.M. 1921; Cal. Civ. C. Sec. 1189; re-en. Sec. 6914, R.C.M. 1935; R.C.M. 1947, 39-111.

1-5-204. En. Sec. 1612, Civ. C. 1895; re-en. Sec. 4664, Rev. C. 1907; amd. Sec. 1, Ch. 3, L. 1913; re-en. Sec. 6915, R.C.M. 1921; Cal. Civ. C. Sec. 1190; re-en. Sec. 6915, R.C.M. 1935; amd. Sec. 1, Ch. 169, L. 1937; R.C.M. 1947, 39-112.

1-5-205. Repealed. Sec. 74, Ch. 18, L. 1995.

History: En. Sec. 1612, Civ. C. 1895; re-en. Sec. 4666, Rev. C. 1907; re-en. Sec. 6917, R.C.M. 1921; Cal. Civ. C. Sec. 1192; re-en. Sec. 6917, R.C.M. 1935; R.C.M. 1947, 39-114.

1-5-206. Repealed. Sec. 22, Ch. 192, L. 1993.

History: (1)En. Sec. 1606, Civ. C. 1895; re-en. Sec. 4660, Rev. C. 1907; re-en. Sec. 6911, R.C.M. 1921; Cal. Civ. C. Sec. 1186; re-en. Sec. 6911, R.C.M. 1935; amd. Sec. 16, Ch. 535, L. 1975; Sec. 39-108, R.C.M. 1947; (2)En. Sec. 1607, Civ. C. 1895; re-en. Sec. 4661, Rev. C. 1907; re-en. Sec. 6912, R.C.M. 1921; Cal. Civ. C. Sec. 1187; Based on Field Civ. C. Sec. 522; re-en. Sec. 6912, R.C.M. 1935; amd. Sec. 17, Ch. 535, L. 1975; Sec. 39-109, R.C.M. 1947; R.C.M. 1947, 39-108, 39-109.

1-5-207. Repealed. Sec. 22, Ch. 192, L. 1993.

History: En. Sec. 1611, Civ. C. 1895; re-en. Sec. 4665, Rev. C. 1907; re-en. Sec. 6916, R.C.M. 1921; Cal. Civ. C. Sec. 1191; re-en. Sec. 6916, R.C.M. 1935; amd. Sec. 18, Ch. 535, L. 1975; R.C.M. 1947, 39-113.

1-5-208. Repealed. Sec. 22, Ch. 192, L. 1993.

History: En. Sec. 1, Ch. 81, L. 1953; R.C.M. 1947, 39-103.1.

Part 3
Proof of Execution

1-5-301. Who may prove execution of instrument. Proof of the execution of an instrument which has not been acknowledged may be made by:

(1) all of the parties who executed it or any one of them;
(2) a subscribing witness; or
(3) other witnesses in cases mentioned in 1-5-302.

History: En. Sec. 1615, Civ. C. 1895; re-en. Sec. 4669, Rev. C. 1907; re-en. Sec. 6920, R.C.M. 1921; Cal. Civ. C. Sec. 1195; re-en. Sec. 6920, R.C.M 1935; R.C.M. 1947, 39-117; amd. Sec. 5, Ch. 119, L. 1979.

1-5-302. When execution may be proved by handwriting. The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, if there is one, in the following cases:

(1) when the parties and all the subscribing witnesses are dead;

(2) when the parties and all the subscribing witnesses are nonresidents of the state;

(3) when the place of their residence is unknown to the party desiring the proof and cannot be ascertained by the exercise of due diligence;

(4) when the subscribing witness conceals himself or cannot be found by the officer by the exercise of due diligence in attempting to serve the subpoena or attachment; or

(5) in case of the continued failure or refusal of the witness to testify for the space of 1 hour after his appearance.

History: En. Sec. 1618, Civ. C. 1895; re-en. Sec. 4672, Rev. C. 1907; re-en. Sec. 6923, R.C.M. 1921; Cal. Civ. Sec. 1198; re-en. Sec. 6923, R.C.M. 1935; R.C.M. 1947, 39-120.

Cross-References

Handwriting analysis, Title 72, ch. 12, part 4.

1-5-303. Facts which must be shown when offering proof of handwriting. The evidence taken under 1-5-302 must satisfactorily prove to the officer the following facts:

(1) the existence of one or more of the conditions mentioned in 1-5-302;

(2) that the witness testifying knew the person whose name purports to be subscribed to the instrument as a party and is well acquainted with his signature;

(3) that the witness testifying personally knew the person who subscribed the instrument as a witness and is well acquainted with his signature;

(4) that the signature or signatures in question are genuine; and

(5) the place of residence of the witness.

History: En. Sec. 1619, Civ. C. 1895; re-en. Sec. 4673, Rev. C. 1907; re-en. Sec. 6924, R.C.M. 1921; Cal. Civ. C. Sec. 1199; re-en. Sec. 6924, R.C.M. 1935; R.C.M. 1947, 39-121; amd. Sec. 6, Ch. 119, L. 1979.

Cross-References

Handwriting analysis, Title 72, ch. 12, part 4.

1-5-304. Powers of officer taking proof of execution. Officers authorized to take the proof of instruments are authorized in such proceedings to:

(1) administer oaths or affirmations as prescribed by law;

(2) employ and swear interpreters; and
(3) issue subpoenas as prescribed by law.

History: En. Sec. 1621, Civ. C. 1895; re-en. Sec. 4675, Rev. C. 1907; re-en. Sec. 6926, R.C.M. 1921; Cal. Civ. C. Sec. 1201; re-en. Sec. 6926, R.C.M. 1935; R.C.M. 1947, 39-123; amd. Sec. 7, Ch. 119, L. 1979.

1-5-305. Contents of certificate of proof. An officer taking proof of the execution of any instrument must, in his certificate endorsed thereon or attached thereto, set forth all the matters required by law to be done or known by him or proved before him on the proceeding, together with the names of all the witnesses examined before him, their places of residence respectively, and the substance of their testimony.

History: En. Sec. 1620, Civ. C. 1895; re-en. Sec. 4674, Rev. C. 1907; re-en. Sec. 6925, R.C.M. 1921; Cal. Civ. C. Sec. 1200; Based on Field Civ. C. Sec. 526; re-en. Sec. 6925, R.C.M. 1935; R.C.M. 1947, 39-122.

Part 4

Notaries Public

1-5-401. Appointment. The secretary of state may appoint and commission as many notaries public for the state of Montana as in the secretary of state's judgment may be deemed best.

History: En. Sec. 910, Pol. C. 1895; re-en. Sec. 317, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1909; re-en. Sec. 385, R.C.M. 1921; Cal. Pol. C. Sec. 791; re-en. Sec. 385, R.C.M. 1935; R.C.M. 1947, 56-101(part); amd. Sec. 12, Ch. 192, L. 1993.

1-5-402. Qualifications — residence. A person appointed as notary public may not, at the time of appointment, be a convicted felon. Each person appointed as a notary public must be a citizen of the United States and of the state of Montana for at least 1 year preceding appointment, and must continue to reside within the state of Montana. Removal from the state or conviction of a felony vacates the office and is equivalent to resignation.

History: En. Sec. 911, Pol. C. 1895; re-en. Sec. 318, Rev. C. 1907; amd. Sec. 2, Ch. 103, L. 1909; re-en. Sec. 386, R.C.M. 1921; Cal. Pol. C. Sec. 792; re-en. Sec. 386, R.C.M. 1935; R.C.M. 1947, 56-102; amd. Sec. 13, Ch. 192, L. 1993.

1-5-403. Term of office. The term of office of a notary public is 4 years from and after the date of commissioning.

History: En. Sec. 912, Pol. C. 1895; re-en. Sec. 319, Rev. C. 1907; re-en. Sec. 387, R.C.M. 1921; Cal. Pol. C. Sec. 793; re-en. Sec. 387, R.C.M. 1935; R.C.M. 1947, 56-103; amd. Sec. 14, Ch. 192, L. 1993.

1-5-404. Revocation of commission. Upon 10 days' notice, the secretary of state may revoke the commission of any notary public for just cause.

History: En. Sec. 922, Pol. C. 1895; re-en. Sec. 329, Rev. C. 1907; re-en. Sec. 398, R.C.M. 1921; re-en. Sec. 398, R.C.M. 1935; R.C.M. 1947, 56-114; amd. Sec. 15, Ch. 192, L. 1993.

1-5-405. Bond and commission. Each notary public shall submit an application and give an official bond in the sum of $5,000. The bond must be approved by the secretary of state. Upon the approval of the bond, the payment of fees, and the filing in the office of the secretary of state of the official oath of the notary public, the secretary of state may issue a commission.

History: En. Secs. 324-325, Rev. C. 1907; amd. Sec. 5, Ch. 103, L. 1909; amd. Sec. 1, Ch. 7, L. 1921; re-en. Sec. 394, R.C.M. 1921; Cal. Pol. C. Sec. 799; re-en. Sec. 394, R.C.M. 1935; R.C.M. 1947, 56-110; amd. Sec. 1, Ch. 80, L. 1983; amd. Sec. 16, Ch. 192, L. 1993.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

1-5-406. Liabilities on official bond. For the official misconduct or neglect of a notary public, he and the sureties on his official bond are liable to the parties injured thereby for all damages sustained.

History: En. Sec. 919, Pol. C. 1895; re-en. Sec. 326, Rev. C. 1907; re-en. Sec. 395, R.C.M. 1921; Cal. Pol. C. Sec. 801; re-en. Sec. 395, R.C.M. 1935; R.C.M. 1947, 56-111.

1-5-407. Certifying the official character of a notary. The secretary of state may certify to the official character of such notary public. Any notary public may file a copy of his commission in the office of any county clerk of any county in the state, and thereafter said county clerk may certify to the official character of such notary public.

History: En. Sec. 2, p. 101, L. 1885; re-en. Sec. 1569, 5th Div. Comp. Stat. 1887; re-en. Sec. 920, Pol. C. 1895; re-en. Sec. 327, Rev. C. 1907; amd. Sec. 6, Ch. 103, L. 1909; re-en. Sec. 396, R.C.M. 1921; re-en. Sec. 396, R.C.M. 1935; R.C.M. 1947, 56-112.

1-5-408. Fees for filing commission and issuing certificates. The secretary of state shall set by rule the fees for filing or issuing certificates. The fees must be commensurate with costs. The secretary of state shall use application forms soliciting the information required by this part. The county clerk of any county in this state shall receive a fee as provided in 7-4-2631 for filing a copy of the commission and certifying to the official character.

History: En. Sec. 3, p. 101, L. 1885; re-en. Sec. 1570, 5th Div. Comp. Stat. 1887; re-en. Sec. 921, Pol. C. 1895; re-en. Sec. 328, Rev. C. 1907; amd. Sec. 7, Ch. 103, L. 1909; re-en. Sec. 397, R.C.M. 1921; re-en. Sec. 397, R.C.M. 1935; amd. Sec. 12, Ch. 117, L. 1961; R.C.M. 1947, 56-113; amd. Sec. 1, Ch. 14, L. 1985; amd. Sec. 17, Ch. 192, L. 1993.

1-5-409. Information to be filed. A person appointed as a notary public shall file his address and telephone number with the office of the secretary of state. If the notary public changes his address or telephone number during his term of commission, he shall notify the office of the change.

History: En. Sec. 1, Ch. 70, L. 1989.

1-5-410 through 1-5-414 reserved.

1-5-415. Jurisdiction. A person receiving a commission as notary public has jurisdiction to perform the person's official duties and acts in every county of the state of Montana irrespective of the person's place of residence within the state. A notary public may perform notarial acts outside Montana pursuant to 1-5-605.

History: Ap. p. Sec. 910, Pol. C. 1895; re-en. Sec. 317, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1909; re-en. Sec. 385, R.C.M. 1921; Cal. Pol. C. Sec. 791; re-en. Sec. 385, R.C.M. 1935; Sec. 56-101, R.C.M. 1947; Ap. p. Sec. 4, Ch. 103, L. 1909; re-en. Sec. 389, R.C.M. 1921; re-en. Sec. 389, R.C.M. 1935; Sec. 56-105, R.C.M. 1947; R.C.M. 1947, 56-101(part), 56-105(part); amd. Sec. 18, Ch. 192, L. 1993.

1-5-416. Powers and duties. (1) A notary public shall:

(a) subject to subsection (2), take the acknowledgment or proof of any power of attorney, mortgage, deed, grant, transfer, or other instrument executed by any person and give a certificate of the proof or acknowledgment, endorsed on or attached to the instrument;

(b) take depositions and affidavits and administer oaths and affirmations in all matters incident to the duties of the notary public's office or to be used before any court, judge, officer, or board in this state;

(c) whenever requested and upon payment of the required fees, make and give a certified copy of any record in the notary public's office;

(d) provide and keep an official seal, upon which must be engraved the name of the state of Montana and the words "Notarial Seal", with the surname of the notary public and at least the initials of the notary public's given name;

(e) authenticate with the notary public's official seal all official acts. Whenever the notary public signs officially as a notary public, the notary public shall add to the signature the words "Notary Public for the State of Montana, residing at.... (stating the name of the notary public's post office)" and shall endorse upon the instrument the date of the expiration of the notary public's commission.

(2) The notary public may not notarize the notary's own signature.

History: En. Sec. 913, Pol. C. 1895; re-en. Sec. 320, Rev. C. 1907; amd. Sec. 3, Ch. 103, L. 1909; re-en. Sec. 388, R.C.M. 1921; Cal. Pol. C. Sec. 794; re-en. Sec. 388, R.C.M. 1935; R.C.M. 1947, 56-104; amd. Sec. 8, Ch. 119, L. 1979; amd. Sec. 1, Ch. 225, L. 1981; amd. Sec. 1, Ch. 64, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 64 in (1)(a), at beginning, inserted "subject to subsection (2)"; inserted (2) prohibiting notaries from notarizing their own signatures; and made minor changes in style.

1-5-417. Authority of notaries who are stockholders, officers, or employees of corporations. It shall be lawful for any notary public who is a stockholder, director, officer, or employee of a bank or other corporation to take the acknowledgment of any party to any written instrument executed to or by such corporation, to administer an oath to any other stockholder, director, officer, employee, or agent of such corporation, or to protest for nonacceptance or nonpayment bills of exchange, drafts, checks, notes, and other negotiable instruments which may be owned or held for collection by such bank or other corporation; provided, it shall be unlawful for any notary public to take the acknowledgment of an instrument by or to a bank or other corporation of which he is a stockholder, director, officer, or employee where such notary is a party individually to such instrument or signs the instrument as a representative of such bank or other corporation or to protest any negotiable instrument owned or held for collection by such bank or other corporation where such notary is individually a party to such instrument.

History: En. Sec. 1, Ch. 77, L. 1909; re-en. Sec. 390, R.C.M. 1921; re-en. Sec. 390, R.C.M. 1935; R.C.M. 1947, 56-106; amd. Sec. 19, Ch. 192, L. 1993.

1-5-418. Fees of notaries. Fees of notaries public are as follows:

(1) for drawing an affidavit, deposition, or other paper for which provision is not herein made, $3.50 per page;

(2) for taking an acknowledgment or proof of a deed or other instrument, to include the seal and the writing of the certificate, for the first signature, $1;

(3) for each additional signature, 50 cents;

(4) for administering an oath or affirmation, $1;

(5) for certifying an affidavit, with or without seal, including oath, $1.

History: En. Sec. 1, Ch. 44, L. 1907; Sec. 3165, Rev. C. 1907; re-en. Sec. 4914, R.C.M. 1921; re-en. Sec. 4914, R.C.M. 1935; R.C.M. 1947, 25-112; amd. Sec. 2, Ch. 225, L. 1981.

1-5-419. Transfer of records upon termination of office. It is the duty of every notary public on his resignation or removal from office or at the expiration of his term and, in case of his death, of his legal representative to forthwith deposit all the records kept by him in the office of the county clerk of the county in which he was resident. On failure to do so, the person so offending is liable to damages to any person injured thereby.

History: En. Sec. 915, Pol. C. 1895; re-en. Sec. 322, Rev. C. 1907; re-en. Sec. 392, R.C.M. 1921; Cal. Pol. C. Sec. 796; re-en. Sec. 392, R.C.M. 1935; R.C.M. 1947, 56-108.

1-5-420. Powers and duties of clerk with whom records deposited. It is the duty of each clerk aforesaid to receive and safely keep all such records and papers of the notary in the case above named and to give attested copies of them under his seal, for which he may demand such fees as by law may be allowed to the notaries, and such copies shall have the same effect as if certified by the notary.

History: En. Sec. 916, Pol. C. 1895; re-en. Sec. 323, Rev. C. 1907; re-en. Sec. 393, R.C.M. 1921; Cal Pol. C. Sec. 797; re-en. Sec. 393, R.C.M. 1935; R.C.M. 1947, 56-109.

Part 5

Commissioners of Deeds (Repealed. Sec. 14, Ch. 119, L. 1979)

Part Compiler's Comments

Histories of Repealed Sections:

1-5-501. En. Sec. 940, Pol. C. 1895; re-en. Sec. 333, Rev. C. 1907; re-en. Sec. 402, R.C.M. 1921; Cal. Pol. C. Secs. 811-817; re-en. Sec. 402, R.C.M. 1935; R.C.M. 1947, 56-201.

1-5-502. En. Sec. 945, Pol. C. 1895; re-en. Sec. 338, Rev. C. 1907; re-en. Sec. 407, R.C.M. 1921; re-en. Sec. 407, R.C.M. 1935; R.C.M. 1947, 56-206.

1-5-503. En. Sec. 946, Pol. C. 1895; re-en. Sec. 339, Rev. C. 1907; re-en. Sec. 408, R.C.M. 1921; re-en. Sec. 408, R.C.M. 1935; R.C.M. 1947, 56-207.

1-5-504. En. Sec. 943, Pol. C. 1895; re-en. Sec. 336, Rev. C. 1907; re-en. Sec. 405, R.C.M. 1921; re-en. Sec. 405, R.C.M. 1935; R.C.M. 1947, 56-204.

1-5-505. En. Sec. 941, Pol. C. 1895; re-en. Sec. 334, Rev. C. 1907; re-en. Sec. 403, R.C.M. 1921; re-en. Sec. 403, R.C.M. 1935; R.C.M. 1947, 56-202.

1-5-506. En. Sec. 942, Pol. C. 1895; re-en. Sec. 335, Rev. C. 1907; re-en. Sec. 404, R.C.M. 1921; re-en. Sec. 404, R.C.M. 1935; R.C.M. 1947, 56-203.

1-5-507. En. Sec. 944, Pol. C. 1895; re-en. Sec. 337, Rev. C. 1907; re-en. Sec. 406, R.C.M. 1921; re-en. Sec. 406, R.C.M. 1935; R.C.M. 1947, 56-205.

Part 6

Notarial Acts

1-5-601. Short title. This part may be cited as the “Uniform Law on Notarial Acts”.

History: En. Sec. 1, Ch. 192, L. 1993.

1-5-602. Definitions. As used in this part, the following definitions apply:

(1) “Acknowledgment” means a declaration by a person that the person has executed an instrument for the purposes stated in the instrument and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified in the instrument.

(2) “In a representative capacity” means:

(a) for and on behalf of a corporation, partnership, trust, or other entity as an authorized officer, agent, partner, trustee, or other representative;

(b) as a public officer, personal representative, guardian, or other representative in the capacity recited in the instrument;

(c) as an attorney in fact for a principal; or

(d) in any other capacity as an authorized representative of another.

(3) "Notarial act" means any act that a notary public of this state is authorized to perform and includes taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.

(4) "Notarial officer" means a notary public or other officer authorized to perform notarial acts.

(5) "Verification upon oath or affirmation" means a declaration that a statement is true made by a person upon oath or affirmation.

History: En. Sec. 2, Ch. 192, L. 1993.

1-5-603. Notarial acts. (1) In taking an acknowledgment, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the acknowledgment is the person whose true signature is on the instrument.

(2) In taking a verification upon oath or affirmation, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the verification is the person whose true signature is on the statement verified.

(3) In witnessing or attesting a signature, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the officer and named in the instrument.

(4) In certifying or attesting a copy of a document or other item, the notarial officer shall determine that the proffered copy is a full, true, and accurate transcription or reproduction of that which was copied.

(5) (a) In making or noting a protest of a negotiable instrument, the notarial officer shall identify the instrument and certify either:

(i) that due presentment has been made; or

(ii) the reason why it is excused and that the instrument has been dishonored by nonacceptance or nonpayment.

(b) The protest may also certify that notice of dishonor has been given to all parties or to specified parties.

(6) A notarial officer has satisfactory evidence that a person is the person whose true signature is on a document if that person is:

(a) personally known to the notarial officer;

(b) identified upon the oath or affirmation of a credible witness personally known to the notarial officer; or

(c) identified on the basis of identification documents.

History: En. Sec. 3, Ch. 192, L. 1993.

1-5-604. Notarial acts in this state. (1) A notarial act may be performed within this state by the following persons:

(a) a notary public of this state;

(b) a judge, clerk, or deputy clerk of any court of this state; or

(c) any other person authorized to perform the specific act by the law of this state.

(2) Notarial acts performed within this state under federal authority as provided in 1-5-607 have the same effect as if performed by a notarial officer of this state.

(3) Subject to the provisions of 1-5-605, notarial acts performed within Montana by notarial officers of bordering states have the same effect as if performed by a notarial officer of Montana.

(4) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

History: En. Sec. 4, Ch. 192, L. 1993.

Cross-References

Powers of judicial officers — taking acknowledgments and affidavits, 3-1-404.

Property — acknowledgment of instruments required, 70-21-203.

1-5-605. Reciprocity of notarial acts. (1) A Montana notarial officer may perform a notarial act in a bordering state if the state recognizes the officer's authority within the state.

(2) A notarial act performed in Montana by a notarial officer of a bordering state has the same effect under Montana law as if the act were performed by a Montana notarial officer, provided that the bordering state grants Montana's notarial officers similar authority within the bordering state.

History: En. Sec. 5, Ch. 192, L. 1993.

1-5-606. Notarial acts in other jurisdictions of the United States. (1) A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if it is performed in another state, commonwealth, territory, district, or possession of the United States by any of the following persons:

(a) a notary public of that jurisdiction;

(b) a judge, clerk, or deputy clerk of a court of that jurisdiction; or

(c) any other person authorized by the law of that jurisdiction to perform notarial acts.

(2) Notarial acts performed in other jurisdictions of the United States under federal authority as provided in 1-5-607 have the same effect as if performed by a notarial officer of this state.

(3) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(4) The signature and indicated title of an officer listed in subsection (1)(a) or (1)(b) conclusively establish the authority of a holder of that title to perform a notarial act.

History: En. Sec. 6, Ch. 192, L. 1993.

1-5-607. Notarial acts under federal authority. (1) A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if it is performed anywhere by any of the following persons under authority granted by the law of the United States:

(a) a judge, clerk, or deputy clerk of a court;

(b) a commissioned officer on active duty in the military service of the United States;

(c) an officer of the foreign service or consular officer of the United States; or

(d) any other person authorized by federal law to perform notarial acts.

(2) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(3) The signature and indicated title of an officer listed in subsection (1)(a), (1)(b), or (1)(c) conclusively establish the authority of a holder of that title to perform a notarial act.

History: En. Sec. 7, Ch. 192, L. 1993.

1-5-608. Foreign notarial acts. (1) A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if it is performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multinational or international organization by any of the following persons:

(a) a notary public or notary;

(b) a judge, clerk, or deputy clerk of a court of record; or

(c) any other person authorized by the law of that jurisdiction to perform notarial acts.

(2) An "apostille" in the form prescribed by the Hague Convention of October 5, 1961, conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

(3) A certificate by a foreign service or consular officer of the United States stationed in the nation under the jurisdiction of which the notarial act was performed or a certificate by a foreign service or consular officer of that nation stationed in the United States conclusively establishes any matter relating to the authenticity or validity of the notarial act set forth in the certificate.

(4) An official stamp or seal of the person performing the notarial act is prima facie evidence that the signature is genuine and that the person holds the indicated title.

(5) An official stamp or seal of an officer listed in subsection (1)(a) or (1)(b) is prima facie evidence that a person with the indicated title has authority to perform notarial acts.

(6) If the title of office and indication of authority to perform notarial acts appears either in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

History: En. Sec. 8, Ch. 192, L. 1993.

1-5-609. Certificate of notarial acts. (1) A notarial act must be evidenced by a certificate signed and dated by a notarial officer. The certificate must include identification of the jurisdiction in which the notarial act is performed and the title of the office of the notarial officer and must include the official seal of office. If the officer is a notary public, the certificate must also indicate the date of expiration, if any, of the commission of office, but omission of that information may subsequently be corrected. If the officer is a commissioned officer on active duty in the military service of the United States, it must also include the officer's rank.

(2) A certificate of a notarial act is sufficient if it meets the requirements of subsection (1) and it:

(a) is in the short form set forth in 1-5-610;

(b) is in a form otherwise prescribed by the law of this state;

(c) is in a form prescribed by the laws or regulations applicable in the place in which the notarial act was performed; or

(d) sets forth the actions of the notarial officer and those are sufficient to meet the requirements of the designated notarial act.

(3) By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determinations required by 1-5-603.

History: En. Sec. 9, Ch. 192, L. 1993.

1-5-610. Short forms. The following short-form certificates of notarial acts are sufficient for the purposes indicated if they are completed with the information required by 1-5-609(1):

(1) For an acknowledgment in an individual capacity:

State of______________________________
(County) of____________________________

This instrument was acknowledged before me on (date) by (name(s) of person(s))

____

____
(Signature of notarial officer)

(Seal, if any)

____
Title (and Rank)
[My commission expires: ________]

(2) For an acknowledgment in a representative capacity:

State of______________________________
(County) of____________________________

This instrument was acknowledged before me on (date) by (name(s) of person(s)) as (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed).

____
(Signature of notarial officer)

(Seal, if any)

____
Title (and Rank)
[My commission expires: ________]

(3) For a verification upon oath or affirmation:

State of______________________________
(County) of____________________________

Signed and sworn to (or affirmed) before me on (date) by (name(s) of person(s) making statement).

____

____
(Signature of notarial officer)

(Seal, if any)

____
Title (and Rank)
[My commission expires: ________]

(4) For witnessing or attesting a signature:
State of______________________________
(County) of____________________________

Signed or attested before me on ______(date)______ by
(name(s) of person(s)).

____

____
(Signature of notarial officer)

(Seal, if any)

____
Title (and Rank)
[My commission expires: ________]

(5) For attestation of a copy of a document:
State of______________________________
(County) of____________________________

I certify that this is a true and correct copy of a document in the possession of_________________________.

Dated __________________

____
(Signature of notarial officer)

(Seal, if any)

____
Title (and Rank)
[My commission expires: ________]

History: En. Sec. 10, Ch. 192, L. 1993.

1-5-611. Uniformity of application and construction. This part must be applied and construed to effectuate the general purpose to make uniform the law with respect to the subject of this part among states enacting it.

History: En. Sec. 11, Ch. 192, L. 1993.

CHAPTER 6

OATHS

Part 1 — General Provisions

1-6-101. Officers who may administer oaths.
1-6-102. Form of ordinary oath.
1-6-103. Variation of oath to suit witness's belief.
1-6-104. Affirmation or declaration in lieu of oath.

Part 1
General Provisions

Part Cross-References

Oath of public office, Art. III, sec. 3, Mont. Const.

Filing of county officers' oaths of office, 7-4-101.

Oath of Superintendent of Public Instruction, 20-3-102.

Oath of County Superintendent of Schools, 20-3-202.

Oath of school trustee, 20-3-307.

Oath of teacher, 20-4-104.

1-6-101. Officers who may administer oaths. Every court, judge, clerk of any court, justice, notary public, and officer or person authorized to take testimony in any action or proceeding or to decide upon evidence has power to administer oaths or affirmations.

History: En. Sec. 360, p. 118, Bannack Stat.; re-en. Sec. 418, p. 219, L. 1867; re-en. Sec. 492, p. 135, Cod. Stat. 1871; amd. Sec. 671, p. 214, L. 1877; re-en. Sec. 671, 1st Div. Rev. Stat. 1879; re-en. Sec. 693, 1st Div. Comp. Stat. 1887; amd. Sec. 3430, C. Civ. Proc. 1895; re-en. Sec. 8049, Rev. C. 1907; re-en. Sec. 10693, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2093; re-en. Sec. 10693, R.C.M. 1935; R.C.M. 1947, 93-2401-1.

1-6-102. Form of ordinary oath. An oath or affirmation in an action or proceeding may be administered as follows: the person who swears or affirms expressing his assent when addressed in the following form, "You do solemnly swear (or affirm, as the case may be) that the evidence you shall give in this issue (or matter), pending between .... and ...., shall be the truth, the whole truth, and nothing but the truth, so help you God".

History: En. Sec. 3431, C. Civ. Proc. 1895; re-en. Sec. 8050, Rev. C. 1907; re-en. Sec. 10694, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2094; re-en. Sec. 10694, R.C.M. 1935; R.C.M. 1947, 93-2401-2.

Cross-References

Public officers — oaths — form — before whom — when, 2-16-211.

1-6-103. Variation of oath to suit witness's belief. The court shall vary the mode of swearing or affirming to accord with the witness's beliefs whenever it is satisfied that the witness has a distinct mode of swearing or affirming.

History: En. Sec. 3432, C. Civ. Proc. 1895; re-en. Sec. 8051, Rev. C. 1907; re-en. Sec. 10695, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2095; re-en. Sec. 10695, R.C.M. 1935; R.C.M. 1947, 93-2401-3; amd. Sec. 9, Ch. 119, L. 1979.

1-6-104. Affirmation or declaration in lieu of oath. Any person who desires it may, at his option, instead of taking an oath make his solemn affirmation or declaration by assenting when addressed in the following form: "You do solemnly affirm (or declare), etc.", as in 1-6-102.

History: En. Sec. 362, p. 118, Bannack Stat.; en. Sec. 420, p. 219, L. 1867; re-en. Sec. 494, p. 135, Cod. Stat. 1871; amd. Sec. 673, p. 215, L. 1877; re-en. Sec. 673, 1st Div. Rev. Stat. 1879; re-en. Sec. 695, 1st Div. Comp. Stat. 1887; amd. Sec. 3434, C. Civ. Proc. 1895; re-en. Sec. 8053, Rev. C. 1907; re-en. Sec. 10697, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2097; re-en. Sec. 10697, R.C.M. 1935; R.C.M. 1947, 93-2401-5.

CHAPTERS 7 THROUGH 10

RESERVED

CHAPTER 11

PUBLICATION AND UPDATING OF THE CODE CODE COMMISSIONER

Part 1 — General Provisions

1-11-101. Definitions.
1-11-102. Name — citation.
1-11-103. Effect of Montana Code Annotated — official version.

Part 2 — Code Commissioner

1-11-201. Code commissioner.
1-11-202. Qualifications of code commissioner.
1-11-203. Supervision by legislative council.
1-11-204. Duties of code commissioner.

Part 3 — Publication

1-11-301. Publication and sale of Montana Code Annotated — free distribution.
1-11-302. Updates of Montana Code Annotated.
1-11-303. Authority to issue ancillary publications.
1-11-304. Copyrights prohibited.

Part 1

General Provisions

1-11-101. Definitions. As used in this chapter, the following definitions apply:

(1) “Code” or “codes” means the Montana Code Annotated, which is a reenactment of the Revised Codes of Montana, 1947, as provided in 1-11-103.

(2) “Recodify” means to compile, arrange, rearrange, and prepare for publication. It includes, without changing the meaning, effect, or intent of any law:

(a) correcting or changing punctuation, capitalization, spelling, grammatical construction, and numbering as required by uniform literary and bill drafting practice;

(b) substituting the appropriate new code division reference for reference to a section of, to a part of, or to an entire “act”;

(c) substituting calendar date for “effective date”, “hereafter”, and similar terms;

(d) creating new titles, chapters, parts, sections, or other divisions of the code;

(e) changing or inserting language made necessary because of rearrangement;

(f) eliminating redundant words;

(g) when given direction or authority by another statute, correcting inaccurate or obsolete references to:

(i) titles of officers or agencies, such as those changed by executive reorganization statutes;

(ii) other code sections, such as those that have been repealed or repealed and replaced;

(h) changing inaccurate terminology to comply with statutory definitions or short form amendments;

(i) changing or creating section captions (catchlines) to clearly reflect the content of the section, unless the section captions are specifically and expressly adopted as part of the law by the legislature.

History: En. 12-501 by Sec. 1, Ch. 419, L. 1975; amd. Sec. 1, Ch. 1, L. 1977; R.C.M. 1947, 12-501; amd. Sec. 1, Ch. 575, L. 1981; amd. Sec. 1, Ch. 292, L. 1995; amd. Sec. 1, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in definition of code, after "means the", inserted "Montana Code Annotated, which is a reenactment of the" and after "1947" substituted "as provided in 1-11-103" for "the pocket supplements thereto, and the replacement volumes"; and in definition of recodify, at end of (2)(h) after "amendments", deleted "such as those found in 1-1-202(7)". Amendment effective March 12, 1997.

1-11-102. Name — citation. The recodified laws shall be known as the "Montana Code Annotated" and may be cited as "MCA".

History: En. 12-504 by Sec. 4, Ch. 419, L. 1975; R.C.M. 1947, 12-504; amd. Sec. 10, Ch. 119, L. 1979.

1-11-103. Effect of Montana Code Annotated — official version. (1) The Montana Code Annotated is a reenactment of the Revised Codes of Montana, 1947, and the supplements thereto.

(2) The enactment of the Montana Code Annotated may not:

(a) revive a law repealed or superseded before the effective date of the Montana Code Annotated;

(b) affect an act done, right accrued, or obligation incurred or imposed by law prior to the effective date of the Montana Code Annotated;

(c) affect any action, suit, or proceeding pending on the effective date of the Montana Code Annotated;

(d) repeal statutes of a nongeneral, nonpermanent nature, such as severability, construction, validating, repealing, or similar statutes, omitted from the Montana Code Annotated.

(3) The Montana Code Annotated must be given effect as a continuation of the Revised Codes of Montana and not as a new enactment. A defect in title of any act set out in prior laws and reenacted by the Montana Code Annotated is cured by the enactment of the Montana Code Annotated.

(4) No implication or presumption of legislative construction is to be drawn from the classification or arrangement of the Montana Code Annotated.

(5) Unless specifically and expressly adopted as part of the law by the legislature, annotations, code commissioner notes, catchlines, or other editorial material included in the Montana Code Annotated may not be construed as part of the legislative text but are only for the purpose of convenience, orderly arrangement, and information.

(6) After enactment, the Montana Code Annotated, including all subsequent replacement volumes, is prima facie the official laws of Montana.

In case of any inconsistency in meaning arising through omission or otherwise between the provisions of the Montana Code Annotated and the corresponding portion of the official enrolled bill on file with the secretary of state, effect must be given to the official enrolled bill.

(7) The Montana Code Annotated, prepared in accordance with part 3, is the official version of the statutes of Montana. The official version of the statutes is the only publication of the statutes that may be used in public documents. This subsection is not intended to interfere with the supreme court's authority to adopt rules of evidence pursuant to Article VII, section 2, of the Montana constitution.

History: En. 12-506 by Sec. 6, Ch. 419, L. 1975; amd. Sec. 4, Ch. 1, L. 1977; R.C.M. 1947, 12-506; amd. Sec. 11, Ch. 119, L. 1979; amd. Sec. 2, Ch. 575, L. 1981; amd. Sec. 1, Ch. 100, L. 1993.

Cross-References

Effect of Legislature's actions, Title 1, ch. 2, part 2.

Part 2

Code Commissioner

1-11-201. Code commissioner. There is within the legislative services division a code commissioner.

History: En. 12-502 by Sec. 2, Ch. 419, L. 1975; R.C.M. 1947, 12-502; amd. Sec. 1, Ch. 159, L. 1979; amd. Sec. 5, Ch. 545, L. 1995.

Cross-References

Legislative Services Division — functional organization and responsibilities, 5-11-112.

1-11-202. Qualifications of code commissioner. To be eligible to be code commissioner, a person must be licensed to practice law in Montana for at least 5 years and demonstrate a knowledge of code arranging and recodification procedures.

History: En. 12-503 by Sec. 3, Ch. 419, L. 1975; R.C.M. 1947, 12-503.

Cross-References

Supreme Court's bar admission rules authority, Art. VII, sec. 2, Mont. Const.

Licensing of attorneys, Title 37, ch. 61.

1-11-203. Supervision by legislative council. The code commissioner is subject to the general supervision and policy of the legislative council.

History: En. 12-505 by Sec. 5, Ch. 419, L. 1975; amd. Sec. 2, Ch. 1, L. 1977; R.C.M. 1947, 12-505(1).

1-11-204. Duties of code commissioner. (1) Prior to November 1 immediately preceding each regular legislative session, the code commissioner shall prepare and submit to the legislative council a report, in tabular or other form, indicating the commissioner's recommendations for legislation that will:

(a) eliminate archaic or outdated laws;

(b) eliminate obsolete or redundant wording of laws;

(c) eliminate duplications in law and any laws repealed directly or by implication;

(d) clarify existing laws;

(e) correct errors and inconsistencies within the laws.

(2) The commissioner shall cause to be prepared for publication with the Montana Code Annotated the following material:

(a) the statutory history of each code section;

(b) annotations of state and federal court decisions relating to the subject matter of the code;

(c) editorial notes, cross-references, and other matter the commissioner considers desirable or advantageous;

(d) the Declaration of Independence;

(e) the Constitution of the United States of America and amendments to the constitution;

(f) acts of congress relating to the authentication of laws and records;

(g) the Organic Act of the Territory of Montana;

(h) The Enabling Act;

(i) The 1972 Constitution of the State of Montana and any amendments to the constitution;

(j) ordinances relating to federal relations and elections;

(k) rules of civil, criminal, and appellate procedure and other rules of procedure the Montana supreme court may adopt; and

(l) a complete subject index, a popular name index, and comparative disposition tables or cross-reference indexes relating sections of the Montana Code Annotated to prior compilations and session laws.

(3) After publication of the Montana Code Annotated, the code commissioner shall:

(a) annotate, arrange, and prepare for publication all laws of a general and permanent nature enacted at each legislative session and assign catchlines and code section numbers to each new section;

(b) continue to codify, index, arrange, rearrange, and generally update the Montana Code Annotated to maintain an orderly and logical arrangement of the laws in order to avoid future need for bulk revision;

(c) prepare and publish a report entitled "Official Report of the Montana Code Commissioner—(year)" that indicates, in tabular or other form, all changes made during the continuous recodification, other than punctuation, spelling, and capitalization, to clearly indicate the character of each change made since the last report.

(4) From time to time, the commissioner shall confer with members of the judiciary and the state bar relative to recodification procedures.

History: En. 12-505 by Sec. 5, Ch. 419, L. 1975; amd. Sec. 2, Ch. 1, L. 1977; R.C.M. 1947, 12-505(2) thru (7); amd. Sec. 12, Ch. 119, L. 1979; amd. Sec. 1, Ch. 3, L. 1985; amd. Sec. 1, Ch. 16, L. 1991; amd. Sec. 2, Ch. 112, L. 1991; amd. Sec. 2, Ch. 349, L. 1993.

Part 3
Publication

1-11-301. Publication and sale of Montana Code Annotated — free distribution. (1) The legislative council, with the advice of the code commissioner, shall decide on the quantity, quality, style, format, and grade of all publications prior to having the code commissioner call for bids for the printing and binding and contract for their publication. The code commissioner shall follow the requirements of state law relating to contracts and bids, except as provided in this section.

(2) The methods of sale to the public of the Montana Code Annotated and supplements or other subsequent and ancillary publications may be included as an alternative specification and bid and as a part of a contract to be let by bids by the code commissioner.

(3) The sales price to the public of all Montana Code Annotated material must be fixed by the legislative council but may not exceed the cost price plus 25%. All revenue generated from the sale of the Montana Code Annotated or ancillary publications must be deposited in the state special revenue fund. Appropriations from the fund may be made for the use of the office and facilities of the legislative council under this chapter.

(4) Sets of the Montana Code Annotated purchased by the state, Montana local governmental agencies that are supported by public funds, and nonprofit organizations may not exceed the cost price of the sets plus 5%.

(5) (a) The Montana Code Annotated and supplements and other subsequent and ancillary publications except annotations must be provided at no cost to the following:

(i) each library designated as a depository library under 22-1-214, one copy;

(ii) each library designated as a federation headquarters library under 22-1-402, one copy.

(b) The state law library in Helena must be provided with four copies of the Montana Code Annotated and supplements, including annotations and other subsequent and ancillary publications.

(c) The legislative council shall include in the cost price of the code the cost of providing the copies under this subsection.

History: En. 12-507 by Sec. 7, Ch. 419, L. 1975; amd. Sec. 5, Ch. 1, L. 1977; R.C.M. 1947, 12-507; amd. Sec. 3, Ch. 1, L. 1979; amd. Sec. 4, Ch. 265, L. 1979; amd. Sec. 1, Ch. 91, L. 1981; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 1, Ch. 83, L. 1989; amd. Sec. 1, Ch. 291, L. 1993; amd. Sec. 1, Ch. 4, L. 1995.

Cross-References

Codes for legislators, 5-11-209.

1-11-302. Updates of Montana Code Annotated. The publication of updates to the Montana Code Annotated may be as a cumulative supplement or replacement volume or in any other format approved by the legislative council.

History: En. 12-510 by Sec. 10, Ch. 419, L. 1975; amd. Sec. 7, Ch. 1, L. 1977; R.C.M. 1947, 12-510(1), (2); amd. Sec. 13, Ch. 119, L. 1979; amd. Sec. 2, Ch. 18, L. 1995.

1-11-303. Authority to issue ancillary publications. The code commissioner may issue supplementary and ancillary publications as necessary or desirable in aid of the general use and purposes of the Montana Code Annotated and the supplements or replacements to the Montana Code Annotated. The code commissioner shall publish a legislative review containing a summary of enactments of each session of the legislature. The code commissioner shall publish a history and final status of all bills and resolutions of each session of the legislature that contains corrected voting records for bills and resolutions.

History: En. 12-510 by Sec. 10, Ch. 419, L. 1975; amd. Sec. 7, Ch. 1, L. 1977; R.C.M. 1947, 12-510(3); amd. Sec. 1, Ch. 22, Sp. L. November 1993; amd. Sec. 6, Ch. 545, L. 1995.

1-11-304. Copyrights prohibited. The Montana Code Annotated, supplements, or other publications ancillary thereto, as published, are the sole property of the state of Montana and may not be copyrighted.

History: En. 12-508 by Sec. 8, Ch. 419, L. 1975; R.C.M. 1947, 12-508; amd. Sec. 2, Ch. 100, L. 1993.

CHAPTER 12

COMMISSION ON UNIFORM STATE LAWS

Part 1 — General Provisions

1-12-101. Appointment, composition, term of office.
1-12-102. Vacancies.
1-12-103. Repealed.
1-12-104. Duties of commissioners.

Part 1
General Provisions

Part Cross-References

See "Popular Names and Short Titles Index" for list of Uniform Laws, MCA General Index.

1-12-101. Appointment, composition, term of office. (1) There is a Montana commission on uniform state laws, which consists of three recognized members of the bar or members of the faculty of the law school of the university of Montana-Missoula and any resident of this state who, because of long service in the cause of the uniformity of state legislation, has been elected a life member of the national conference of commissioners on uniform state laws. Commissioners must be appointed by the legislative council for terms of 4 years each or until their successors are appointed. The legislative council may accept recommendations for appointments from the state bar of Montana, the Montana judges' association, and the dean of the law school.

(2) Commissioners shall serve for no salary. Commissioners are entitled to reimbursement for expenses as provided in 2-18-501.

History: En. Sec. 1, Ch. 175, L. 1945; R.C.M. 1947, 12-401; amd. Sec. 1, Ch. 99, L. 1993; amd. sec. 36, Ch. 308, L. 1995.

1-12-102. Vacancies. If an appointed commissioner dies, resigns, or fails or refuses to serve, the office becomes vacant. The legislative council shall appoint a qualified person to fill the vacancy for the unexpired term.

History: En. Sec. 2, Ch. 175, L. 1945; amd. Sec. 2, Ch. 309, L. 1977; R.C.M. 1947, 12-402; amd. Sec. 2, Ch. 99, L. 1993.

1-12-103. Repealed. Sec. 5, Ch. 99, L. 1993.

History: En. Sec. 3, Ch. 175, L. 1945; R.C.M. 1947, 12-403.

1-12-104. Duties of commissioners. (1) Each commissioner shall attempt to attend the meeting of the national conference of commissioners on uniform state laws and shall promote uniformity in state laws upon all subjects in which uniformity is desirable and practicable.

(2) It is the duty of the commission to bring about, as far as practicable, the uniform judicial interpretation of all uniform laws.

History: En. Sec. 4, Ch. 175, L. 1945; amd. Sec. 8, Ch. 93, L. 1969; R.C.M. 1947, 12-404; amd. Sec. 1, Ch. 125, L. 1983; amd. Sec. 3, Ch. 99, L. 1993.

CHAPTER 13

INTERNATIONAL RELATIONS
(Repealed. Sec. 82, Ch. 545, L. 1995)

Chapter Compiler's Comments

Histories of Repealed Sections:

1-13-101.	En. Sec. 1, Ch. 511, L. 1985.
1-13-102.	En. Sec. 2, Ch. 511, L. 1985.
1-13-103.	En. Sec. 3, Ch. 511, L. 1985.

1-13-104 reserved.

1-13-105.	En. Sec. 4, Ch. 511, L. 1985.

1-13-106 through 1-13-110 reserved.

1-13-111.	En. Sec. 5, Ch. 511, L. 1985.

TITLE 2

GOVERNMENT STRUCTURE AND ADMINISTRATION

Ch.
1. Sovereignty and Jurisdiction.
2. Standards of Conduct.
3. Public Participation in Governmental Operations.
4. Administrative Procedure Act.
5. Montana Negotiated Rulemaking Act.
6. Public Records.
7. Studies, Reports, and Audits.
8. Legislative Review.
9. Liability Exposure and Insurance Coverage.
10. State Agency Actions Affecting Private Property.
11. Legal Authority for Government Action.
Chapters 12 through 14 reserved.
15. Executive Branch Officers and Agencies.
16. Public Officers.
17. Property and Systems Development and Management.
18. State Employee Classification, Compensation, and Benefits.
19. Termination of State Agencies.
Chapters 20 through 88 reserved.
89. Montana Statehood Centennial. Repealed and Terminated.

CHAPTER 1

SOVEREIGNTY AND JURISDICTION

Part 1 — Sovereignty and Jurisdiction of the State

2-1-101. Sovereignty and style of process.
2-1-102. Sovereignty and jurisdiction of the state.
2-1-103. Repealed.

Part 2 — Cession and Retrocession of Jurisdiction

2-1-201. Jurisdiction in federal enclaves.
2-1-202. Jurisdiction over lands purchased by United States — reservation of rights to state.
2-1-203. Withdrawal of offer to cede legislative jurisdiction.
2-1-204. Military reservations — service of process.
2-1-205. Glacier national park.
2-1-206. Cession and retrocession of jurisdiction over Blackfeet highway.
2-1-207. Yellowstone national park.
2-1-208. Withdrawal of consent to purchase additional state lands for national park.
2-1-209. Concurrent jurisdiction over Fort Peck Dam ceded to United States — reservation of rights to state.
2-1-210. Consent to purchase of lands by United States for national forest purposes — jurisdiction.
2-1-211. Consent to purchase lands for migratory bird reservations — jurisdiction.
2-1-212. Acceptance of concurrent jurisdiction over veterans center.
2-1-213. Acceptance of concurrent jurisdiction over Big Hole national battlefield.
2-1-214. Concurrent jurisdiction of the United States over certain lands dedicated to national park purposes.
2-1-215. Acceptance of jurisdiction over federal lands.
2-1-216. Filing of acceptance of jurisdiction over federal lands.

Part 3 — Jurisdiction on Indian Lands

2-1-301. Assumption of criminal jurisdiction of Flathead Indian country.
2-1-302. Resolution of Indian tribes requesting state jurisdiction — governor's proclamation — consent of county commissioners.
2-1-303. Date of assumption of jurisdiction — application of state law in Indian country.
2-1-304. Rights, privileges, and immunities reserved to Indians.
2-1-305. Indian culture protected.
2-1-306. Withdrawal of consent to state jurisdiction.
2-1-307. Service of process.

Part 4 — Federal Mandates Act

2-1-401. Short title.
2-1-402. Legislative declaration.
2-1-403. Definitions.
2-1-404. State programs to implement federal statutes.
2-1-405. Requirement for budget recommendation — reporting on federal mandates — savings.
2-1-406. Information regarding federal mandates.
2-1-407. Report — recommendations.
2-1-408. Legislative review and oversight.

Part 1

Sovereignty and Jurisdiction of the State

2-1-101. Sovereignty and style of process. The sovereignty of the state resides in the people thereof, but the style of all process must be "The State of Montana", and all prosecutions must be conducted in the name of the state.

History: En. Sec. 30, Pol. C. 1895; re-en. Sec. 20, Rev. C. 1907; re-en. Sec. 19, R.C.M. 1921; Cal. Pol. C. Sec. 30; re-en. Sec. 19, R.C.M. 1935; R.C.M. 1947, 83-101.

Cross-References

Popular sovereignty, Art. II, sec. 1, Mont, Const.

2-1-102. Sovereignty and jurisdiction of the state. The sovereignty and jurisdiction of this state extend to all places within its boundaries as established by the constitution, excepting such places as are under the exclusive jurisdiction of the United States.

History: En. Sec. 40, Pol. C. 1895; re-en. Sec. 21, Rev. C. 1907; re-en. Sec. 20, R.C.M. 1921; Cal. Pol. C. Sec. 33; re-en. Sec. 20, R.C.M. 1935; R.C.M. 1947, 83-102(part).

Cross-References

Compact with United States, Art. I, Mont. Const.

Disclaimer to Indian lands, The Enabling Act, sec. 4 (see anno., vol. 1, Federal Materials).

2-1-103. Repealed. Sec. 32, Ch. 184, L. 1979.

History: En. Sec. 50, Pol. C. 1895; re-en. Sec. 25, Rev. C. 1907; re-en. Sec. 26, R.C.M. 1921; Cal. Pol. C. Sec. 37; re-en. Sec. 26, R.C.M. 1935; R.C.M. 1947, 83-201.

Part 2

Cession and Retrocession of Jurisdiction

Part Cross-References

Consent and assent of state relating to federal fish and wildlife projects and reserves, Title 87, ch. 1, part 7.

2-1-201. Jurisdiction in federal enclaves. The extent of the jurisdiction of this state over places that have been or may be ceded to, purchased, or condemned by the United States is qualified by the terms of such cession or the laws under which such purchase or condemnation has been or may be made.

History: En. Sec. 40, Pol. C. 1895; re-en. Sec. 21, Rev. C. 1907; re-en. Sec. 20, R.C.M. 1921; Cal. Pol. C. Sec. 33; re-en. Sec. 20, R.C.M. 1935; R.C.M. 1947, 83-102(part).

2-1-202. Jurisdiction over lands purchased by United States — reservation of rights to state. Pursuant to Article I, section 8, paragraph 17, of the constitution of the United States, consent to purchase is hereby given and exclusive jurisdiction is ceded to the United States over and with respect to any lands within the limits of this state that are acquired by the complete purchase by the United States for any of the purposes described in paragraph 17 of the constitution of the United States. The jurisdiction must continue as long as the lands are held and occupied by the United States for the described purposes. The state reserves the right to serve and execute civil or criminal process lawfully issued by the courts of the state within the limits of the territory over which jurisdiction is ceded in any suits or transactions for or on account of any rights obtained, obligations incurred, or crimes committed in this state, within or outside of the territory. The state also reserves the right to tax persons and corporations and their franchises and property within the territory. The state and its inhabitants and citizens reserve the right to fish and hunt and the right of access, ingress, and egress to and through the ceded territory to all persons owning or controlling livestock for the purpose of watering the livestock. The state reserves jurisdiction in the enforcement of state laws relating to the duties of the department of livestock and the department of environmental quality and the enforcement of any regulations promulgated by the departments in accordance with the laws of the state. Jurisdiction does not vest until the United States, through the proper officers, files an accurate map or plat and description by metes and bounds of the lands in the office of the county clerk and recorder of the county in which the lands are situated. If the lands are within the corporate limits of any city, the map or plat must also be filed in the office of the city clerk of the city. The filing of the map constitutes acceptance of the jurisdiction by the United States as ceded.

History: En. Sec. 1, p. 52, L. 1893; re-en. Sec. 43, Pol. C. 1895; re-en. Sec. 24, Rev. C. 1907; re-en. Sec. 25, R.C.M. 1921; re-en. Sec. 25, R.C.M. 1935; amd. Sec. 1, Ch. 155, L. 1939; amd. Sec. 102, Ch. 349, L. 1974; R.C.M. 1947, 83-108(part); amd. Sec. 1, Ch. 418, L. 1995.

Cross-References

Department of Livestock, Title 2, ch. 15, part 31.

Department of Environmental Quality, Title 2, ch. 15, part 35.

2-1-203. Withdrawal of offer to cede legislative jurisdiction. The offer by the state of Montana to cede to the federal government legislative jurisdiction over areas within the state of Montana as contained in the act of the second legislative assembly of the state of Montana, 1891, entitled: "An Act Giving the Consent of the State of Montana to the Purchase, by the United States, of Land in any City or Town of the State, for the Purpose of United States Courthouse, Post Office and for Other Purposes" approved March 5, 1891, as amended by the act of the third legislative assembly of 1893, an act entitled: "An Act Giving the Consent of the State of Montana to the Purchase by the United States of Land in any City or Town of the State for the Purpose of United States Courthouse, Post Offices and for Other Like Purposes", approved March 9, 1893, is hereby withdrawn except as to areas heretofore completely purchased or acquired by the federal government and over which areas the federal government has heretofore assumed either exclusive legislative jurisdiction or concurrent legislative jurisdiction under the terms of one or the other of said acts.

History: En. Sec. 1, p. 52, L. 1893; re-en. Sec. 43, Pol. C. 1895; re-en. Sec. 24, Rev. C. 1907; re-en. Sec. 25, R.C.M. 1921; re-en. Sec. 25, R.C.M. 1935; amd. Sec. 1, Ch. 155, L. 1939; amd. Sec. 102, Ch. 349, L. 1974; R.C.M. 1947, 83-108(part).

2-1-204. Military reservations — service of process. (1) Authority is granted to and acknowledged in the United States to exercise exclusive legislation as provided by the constitution of the United States over the military reservation of Fort Missoula as established by law to the same extent and with the same effect as if the reservation had been purchased by the United States by consent of the legislative assembly of the state of Montana so long as it remains a military reservation.

(2) All legal process of the state, both civil and criminal, may be served upon persons and property found within the reservation in all cases where the United States does not have exclusive jurisdiction.

History: En. Sec. 41, Pol. C. 1895; re-en. Sec. 22, Rev. C. 1907; re-en. Sec. 21, R.C.M. 1921; re-en. Sec. 21, R.C.M. 1935; R.C.M. 1947, 83-103(part); amd. Sec. 1, Ch. 184, L. 1979.

2-1-205. Glacier national park. Exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all the territory which is now or may hereafter be included in that tract of land in the state of Montana set aside by the act of congress, approved May 11, 1910, for the purposes of a national park, and known and designated as "The Glacier national park", saving, however, to the said state the right to serve civil or criminal process within the limits of the aforesaid park in any suits or prosecution for or on account of rights acquired, obligations incurred, or crimes committed in said state but outside of said park; and saving, further, to the state the right to tax persons and corporations, their franchises and property on the lands included in said park; provided, however, that jurisdiction shall not vest until the United States, through the proper officers, notifies the governor of this state that it assumes police or military jurisdiction over said park.

History: En. Sec. 1, Ch. 33, L. 1911; re-en. Sec. 22, R.C.M. 1921; re-en. Sec. 22, R.C.M. 1935; R.C.M. 1947, 83-104.

2-1-206. Cession and retrocession of jurisdiction over Blackfeet highway. (1) Concurrent police jurisdiction shall be and the same is hereby granted to the United States of America over and within all the territory which is now or may hereafter be included in the rights-of-way of the Blackfeet highway, including the highway itself throughout its length between Glacier Park Station and the Canadian boundary line and the rights-of-way of the highways on the Blackfeet Indian reservation connecting the Blackfeet highway with the Glacier park road system, including the highways themselves.

(2) Jurisdiction herein granted shall not vest until the United States of America, through the proper officers, notifies the governor of the state of

Montana that it assumes concurrent police jurisdiction over the said rights-of-way and the said highways.

(3) The provisions of the act of congress of March 15, 1958, Public Law 85-343, 85th congress, S.1828, 72 Stat. 35-36, to retrocede to the state of Montana such concurrent police jurisdiction as has been ceded to the United States of America over the rights-of-way of the Blackfeet highway, including the highway itself, and over the rights-of-way of its connection with the Glacier national park road system on the Blackfeet Indian reservation, including the highways themselves, are hereby accepted by the state of Montana as required by section 2 of said act of March 15, 1958 (72 Stat. 35-36), with the understanding on the part of the state of Montana that the laws and regulations of the United States of America pertaining to Glacier national park shall cease to apply to the territory of said rights-of-way and highways as in said act of the congress made and provided.

History: (1)En. Sec. 1, Ch. 37, L. 1929; re-en. Sec. 26.1, R.C.M. 1935; Sec. 83-111, R.C.M. 1947; (2)En. Sec. 2, Ch. 37, L. 1929; re-en. Sec. 26.2, R.C.M. 1935; Sec. 83-112, R.C.M. 1947; (3)En. Sec. 1, Ch. 157, L. 1963; Sec. 83-104.1, R.C.M. 1947; R.C.M. 1947, 83-104.1, 83-111, 83-112.

2-1-207. Yellowstone national park. Exclusive jurisdiction shall be and the same is hereby ceded to the United States over all that part of territory situate in the state of Montana now embraced in the Yellowstone national park, described as follows:

Beginning at the intersection of the east boundary of Yellowstone park with the south boundary of Montana; thence north to the northeast corner of said park; thence west along the north boundary of the park to the northwest corner thereof; thence south along the west boundary of the park to the boundary between Montana and Idaho; thence easterly along that boundary to the west boundary of Wyoming; thence north along the west boundary of Wyoming to the northwest corner thereof; thence east along the boundary between Wyoming and Montana to the east boundary of said park, the place of beginning; containing an area of approximately 198 square miles, saving, however, to the said state the right to serve civil or criminal process within the limits of the aforesaid described lands in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said state but outside the lands aforesaid, as long as the lands herein described are used for a national park and no other purposes.

History: En. Sec. 1, Ch. 112, L. 1917; re-en. Sec. 23, R.C.M. 1921; re-en. Sec. 23, R.C.M. 1935; amd. Sec. 1, Ch. 142, L. 1939; R.C.M. 1947, 83-106.

2-1-208. Withdrawal of consent to purchase additional state lands for national park. The consent of the state of Montana to the purchase by the United States of lands within the state of Montana to be embraced in Yellowstone national park, other than the lands described in 2-1-207, and the consent of the state of Montana to the exercise of legislative jurisdiction by the United States over any additional lands to be embraced in said national park, as such consents may be contained in the act of the second legislative assembly of the state of Montana approved February 14, 1891, entitled, "An Act Ceding to the United States Jurisdiction Over Certain Lands" or any amendment of said act is hereby withdrawn, and exclusive legislative jurisdiction over all lands within the state of Montana that may be added hereafter to said national park shall be retained in the state of Montana.

History: En. Sec. 2, Ch. 142, L. 1939; R.C.M. 1947, 83-107.

2-1-209. Concurrent jurisdiction over Fort Peck Dam ceded to United States — reservation of rights to state. Consent to purchase or condemn all necessary lands is hereby given and concurrent jurisdiction is ceded to the United States over the Fort Peck Dam, the body of water or artificial lake created by the dam, the land under the body of water, and any lands now owned or that may be acquired by the United States and that touch the body of water, all such land and water being situated in the counties of Valley, Phillips, McCone, Garfield, Petroleum, and Fergus, state of Montana. The state reserves the right to serve civil or criminal process within the limits of the territory over which jurisdiction is ceded in any suits or prosecutions for or on account of rights obtained, obligations incurred, or crimes committed in this state, within or outside of the territory. The state also reserves the right to tax persons and corporations and their franchises and property within the territory. The state and its inhabitants, citizens, and nonresidents reserve the right to fish or hunt by boat or otherwise and the right of access, ingress, and egress to and through the ceded territory to all persons owning or controlling livestock for the purpose of watering the livestock. The state reserves jurisdiction in the enforcement of state laws relating to the duties of the department of livestock and the department of environmental quality and the enforcement of regulations promulgated by the departments in accordance with the laws of the state. Jurisdiction does not vest until the United States, through the proper officers, notifies the governor of the state of Montana that it assumes police or military jurisdiction over the territory.

History: En. Sec. 1, Ch. 50, Ex. L. 1933; re-en. Sec. 25.1, R.C.M. 1935; amd. Sec. 103, Ch. 349, L. 1974; R.C.M. 1947, 83-109; amd. Sec. 2, Ch. 418, L. 1995.

Cross-References

Department of Livestock, Title 2, ch. 15, part 31.

Department of Environmental Quality, Title 2, ch. 15, part 35.

2-1-210. Consent to purchase of lands by United States for national forest purposes — jurisdiction. (1) For the purpose of more effectively cooperating with the United States in the consolidating and rounding out of national forests in accordance with land-use plans and to facilitate the placing of forest lands other than national forest but which are integral with national forest lands under stable protection and administration to the end of public benefit and to help land owners, including the counties of the state in their discretion, to dispose of such of their lands as may be needed for national forest purposes, consent of the state of Montana is hereby given to the purchase by the United States of such lands in the state of Montana as in the opinion of the secretary of agriculture are needed for the purposes contemplated in section 6 of the act of congress approved March 1, 1911, commonly known as and called the Weeks law, and/or section 6 of the act of congress approved June 7, 1924, commonly known as the Clarke-McNary law, and/or any other provisions of any act of congress authorizing the purchase of land for national forest purposes.

(2) The jurisdiction of the state of Montana, both civil and criminal, over persons upon areas acquired under this section shall not be affected or changed by reason of their acquisition and administration by the United States, except so far as the punishment of offenses against the United States is concerned.

(3) The state shall have the same jurisdiction in respect to such lands as it has in respect to other national forest lands within the state.

(4) All property rights, easements, and benefits retained by or reserved to owners of lands purchased by the United States shall be subject to the tax laws of the state.

History: En. Sec. 1, Ch. 118, L. 1935; re-en. Sec. 25.2, R.C.M. 1935; R.C.M. 1947, 83-110.

2-1-211. Consent to purchase lands for migratory bird reservations — jurisdiction. Consent of the state of Montana is given to the acquisition by the United States by purchase, gift, devise, or lease of such areas of land, water, or land and water in the state of Montana as the United States may deem necessary for the establishment of migratory bird reservations in accordance with the act of congress approved February 18, 1929, (as amended), entitled "An Act to More Effectively Meet the Obligations of the United States under the Migratory Bird Treaty with Great Britain by Lessening the Dangers Threatening Migratory Game Birds from Drainage and Other Causes by the Acquisition of Areas of Land and of Water to Furnish in Perpetuity Reservations for the Adequate Protection of such Birds; and Authorizing Appropriations for the Establishment of such Areas, their Maintenance and Improvement and for Other Purposes", reserving, however, to the state of Montana full and complete jurisdiction and authority over all such areas not incompatible with the administration, maintenance, protection, and control thereof by the United States under the terms of said act of congress.

History: En. Sec. 1, Ch. 96, L. 1961; R.C.M. 1947, 83-113.

2-1-212. Acceptance of concurrent jurisdiction over veterans center. The state of Montana hereby accepts the cession of concurrent jurisdiction with the United States over the real property comprising the veterans center, Fort Harrison, Montana, as ceded by Public Law 91-45, 88 Stat. 48, which was approved July 19, 1969, and made effective upon acceptance of the cession by the state of Montana.

History: En. Sec. 1, Ch. 157, L. 1971; R.C.M. 1947, 83-114; amd. Sec. 1, Ch. 10, L. 1993; amd. Sec. 2, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 near end substituted reference to 88 Stat. 48 for reference to 83 Stat. 48. Amendment effective March 12, 1997.

2-1-213. Acceptance of concurrent jurisdiction over Big Hole national battlefield. The state of Montana accepts the retrocession in Public Law 88-24, which was approved May 17, 1963, and made effective upon acceptance of the retrocession by the state of Montana of such jurisdiction as had been ceded by this state to the United States over the lands within the boundaries of the Big Hole national battlefield. This state recognizes the reservation in the United States of concurrent legislative jurisdiction over such lands.

History: En. 83-115 by Sec. 1, Ch. 125, L. 1977; R.C.M. 1947, 83-115.

2-1-214. Concurrent jurisdiction of the United States over certain lands dedicated to national park purposes. (1) Concurrent jurisdiction over crimes and offenses under the laws of the state is ceded to the United States over and within all the lands dedicated to national park purposes in the following tracts:

(a) Big Horn Canyon;
(b) Grant-Kohrs national historic site;
(c) Big Hole national battlefield; and
(d) Fort Union trading post.

(2) The concurrent jurisdiction ceded by subsection (1) is vested upon acceptance by the United States by and through its appropriate officials and shall continue so long as the lands within the designated areas are dedicated to park purposes.

History: En Sec. 1, Ch. 302, L. 1979.

2-1-215. Acceptance of jurisdiction over federal lands. The consent of the state is hereby given to the retrocession of jurisdiction, either partially or wholly, by the United States of America over lands owned by the United States of America within the boundaries of Montana that are used for national park purposes. The governor is authorized to accept for the state retrocession of jurisdiction.

History: En Sec. 2, Ch. 302, L. 1979.

2-1-216. Filing of acceptance of jurisdiction over federal lands. (1) When the state receives written notification from the authorized official or agent of the United States of America that the United States desires or is willing to relinquish to the state jurisdiction, or a portion thereof, over certain lands owned by the United States within Montana that are used for national park purposes, the governor may accept relinquishment.

(2) After acceptance and approval by the governor, retrocession of jurisdiction becomes effective upon filing of the original acceptance with the secretary of state of Montana.

History: En Sec. 3, Ch. 302, L. 1979.

Part 3
Jurisdiction on Indian Lands

Part Cross-References

State-tribal cooperative agreements, Title 18, ch. 11.

2-1-301. Assumption of criminal jurisdiction of Flathead Indian country. The state of Montana hereby obligates and binds itself to assume, as herein provided, criminal jurisdiction over Indians and Indian territory of the Flathead Indian reservation and country within the state in accordance with the consent of the United States given by the act of August 15, 1953 (Public Law 280, 83rd congress, 1st session).

History: En. Sec. 1, Ch. 81, L. 1963; R.C.M. 1947, 83-801.

2-1-302. Resolution of Indian tribes requesting state jurisdiction — governor's proclamation — consent of county commissioners. (1) Whenever the governor of this state receives from the tribal council or other governing body of the Confederated Salish and Kootenai Indian tribes or any other community, band, or group of Indians in this state, a resolution expressing its desire that its people and lands be subject to the criminal or civil jurisdiction, or both, of the state to the extent authorized by federal law and regulation, he shall issue within 60 days a proclamation to the effect that such jurisdiction applies to those Indians and their territory or reservation in accordance with the provisions of this part.

(2) The governor may not issue the proclamation until the resolution has been approved in the manner provided for by the charter, constitution, or other fundamental law of the tribe or tribes, if said document provides for such approval, and there has been first obtained the consent of the board of county commissioners of each county which encompasses any portion of the reservation of such tribe or tribes.

History: **En. Sec. 2, Ch. 81, L. 1963; R.C.M. 1947, 83-802; amd. Sec. 2, Ch. 184, L. 1979.**

2-1-303. Date of assumption of jurisdiction — application of state law in Indian country. Sixty days from the date of issuance of the proclamation of the governor as provided for by 2-1-302, the state of Montana shall assume jurisdiction over offenses committed by or against Indians in the lands prescribed in the proclamation to the same extent that this state has jurisdiction over offenses committed elsewhere within this state. The criminal and/or civil laws of this state shall have the same force and effect within such lands as they have elsewhere within this state.

History: **En. Sec. 3, Ch. 81, L. 1963; R.C.M. 1947, 83-803.**

2-1-304. Rights, privileges, and immunities reserved to Indians. Nothing in this part shall:

(1) authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States;

(2) authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute or with any regulation made pursuant thereto;

(3) confer jurisdiction upon the state of Montana to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein; or

(4) deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under federal treaty, agreement, statute, or executive order with respect to hunting, trapping, fishing, or the control, licensing, or regulation thereof.

History: **En. Sec. 4, Ch. 81, L. 1963; R.C.M. 1947, 83-804.**

Cross-References

Compact with United States — reaffirmation of state disclaimers concerning Indian land, Art. I, Mont. Const.

2-1-305. Indian culture protected. Nothing in this part shall deprive the Indian tribe, band, or community from carrying on its age-old tribal dances, feasting, or customary Indian celebrations or in any way try to destroy the Indian culture.

History: **En. Sec. 5, Ch. 81, L. 1963; R.C.M. 1947, 83-805.**

Cross-References

Educational goal to preserve Indian cultural integrity, Art. X, sec. 1(2), Mont. Const.

2-1-306. Withdrawal of consent to state jurisdiction. (1) No sooner than 6 months after April 24, 1993, and after consulting with local government officials concerning implementation, the Confederated Salish and Kootenai tribes may, by tribal resolution, withdraw consent to be subject to the criminal misdemeanor jurisdiction of the state of Montana. Within 6 months after receipt of the resolution, the governor shall issue a proclamation to that effect.

(2) The Confederated Salish and Kootenai tribes may, by separate resolution, withdraw consent to be subject to those areas of civil jurisdiction of the state of Montana that are delineated in tribal ordinance 40-A (revised and enacted May 5, 1965). The withdrawal is limited to those delineated areas of civil jurisdiction agreed upon in writing by the governor after consultation with the attorney general and officials of affected local governments. The tribes shall initiate this process by sending a certified letter to the governor. After consultation and execution of a written agreement between the governor and the tribes, the agreed-upon civil areas must be incorporated into a tribal resolution to be enacted by the tribes. Within 6 months after receipt of the tribal resolution, the governor shall issue a proclamation to that effect that reflects the terms of the written agreement.

(3) Subsections (1) and (2) do not alter the existing jurisdiction or authority of the Confederated Salish and Kootenai tribes or the state of Montana, except as expressly provided for in subsections (1) and (2).

History: En. Sec. 6, Ch. 81, L. 1963; R.C.M. 1947, 83-806; amd. Sec. 1, Ch. 542, L. 1993.

2-1-307. Service of process. All legal process of the state, both civil and criminal, may be served upon persons and property found on any Indian reservation in all cases where the United States has not exclusive jurisdiction.

History: En. Sec. 41, Pol. C. 1895; re-en. Sec. 22, Rev. C. 1907; re-en. Sec. 21, R.C.M. 1921; re-en. Sec. 21, R.C.M. 1935; R.C.M. 1947, 83-103(part).

Part 4

Federal Mandates Act

2-1-401. Short title. This part may be cited as the "Federal Mandates Act".

History: En. Sec. 1, Ch. 385, L. 1995.

2-1-402. Legislative declaration. (1) (a) In enacting this part, the legislature employs its legislative authority to establish that the people of the state of Montana, acting through their elected officials in state government, have the responsibility and authority to establish policy in and for Montana pertaining to federal programs mandated in federal statutes.

(b) The intent of the legislature is to ensure the primacy of the state of Montana's legal and political authority to implement in and for Montana the policy mandated by federal statutes and to vigorously challenge and scrutinize the extent and scope of authority asserted by federal executive branch agencies when federal agency actions and interpretations are inconsistent with Montana policy and exceed the lawful authority of the federal government or are not required by federal law.

(c) In this regard, the Montana legislature finds and declares that:

(i) the power to implement federal policies in and for Montana is central to the ability of the people of Montana to govern themselves under a federal system of government; and

(ii) any implementation of federal policies in and for Montana by federal executive branch agencies that is contrary to fundamental notions of federalism and self-determination must be identified and countered.

(2) The legislature further finds and declares that:

(a) there is an urgent need to modify federal mandates because the implementation of these mandates by the state wastes the financial resources of local governments, the citizens of Montana, and the state and does not properly respect the rights of local governments, citizens, and the state;

(b) the state government has an obligation to the public to do what is necessary to protect the rights of Montana citizens under federal law while minimizing or eliminating any additional cost or regulatory burden on any citizen of the state;

(c) the 10th amendment to the United States constitution directs that powers that are not delegated to the United States are reserved to the states or to the people. Montana, as one of the sovereign states within the union, has constitutional authority to enact laws protecting the environment of the state and safeguarding the public health, safety, and welfare of the citizens of Montana. However, this authority has too often been ignored by the federal government. The federal government has intruded more and more into areas that must be left to the states. It is essential that the dilution of the authority of state and local governments be halted and that the provisions of the 10th amendment be accorded proper respect.

(d) current federal regulatory mandates, as reflected in federal administrative regulations, guidelines, and policies, often do not reflect the realities of the Rocky Mountain region, and federal regulators frequently do not understand the needs and priorities of the citizens of Montana;

(e) the citizens of this state can create and wish to create innovative solutions to Montana's problems, but the current manner in which legal challenges to state policies and federal programmatic substitutions of state programs are handled does not allow the state the flexibility it needs. It is not possible for the state of Montana to effectively and efficiently implement the provisions of federal statutes unless the burden to prove the insufficiency of the state's efforts to implement federal requirements is shifted to the person or agency who asserts the insufficiency.

(f) the provisions of this part will better balance the exercise of the powers of the federal government and the powers reserved to the states. In addition, the application of this part ultimately will bring about greater protection for the state and the nation because it will direct the state to implement federal statutes at the least possible cost and will make more money available for other needs.

(g) the purpose of this part is to ensure that federal mandates existing on or adopted after April 12, 1995, that are implemented in Montana comply with state policy as established by the legislature;

(h) nothing in this part may be construed to create a private cause of action.

History: En. Sec. 2, Ch. 385, L. 1995.

2-1-403. Definitions. As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Federal statute" means a federal statute that is in accord with the United States constitution and that imposes mandates on state or local governments.

(2) "Legislative council" means the statutory committee established in 5-11-101.

History: En. Sec. 3, Ch. 385, L. 1995.

2-1-404. State programs to implement federal statutes. (1) A state official or employee charged with the duty of implementing a federal statute shall implement the law as required by the federal statute in good faith and with a critical view toward the provisions of any federal regulation, guideline, or policy in order to identify those provisions of any federal regulation, guideline, or policy that are inconsistent with Montana policy or do not advance Montana policy in a cost-effective manner.

(2) An executive branch agency of state government that is authorized to develop a state program to respond to any mandates contained in a federal statute shall develop the state program and promulgate any necessary rules, using the following criteria:

(a) State programs should be developed by the state agency to meet the requirements of federal statutes in good faith and with a critical view toward any federal regulations, guidelines, or policies.

(b) State programs should be developed with due consideration of the financial restraints of local governments, the citizens of Montana, and the state, including the limitation imposed by Article VIII, section 9, of the Montana constitution.

(c) A state program that implements the goals of the federal statute should provide for the most efficient method possible, with careful consideration given to the cost of the program and the impact of the program on local governments and Montana citizens and on the long-range public health, safety, and welfare of citizens of the state.

History: En. Sec. 4, Ch. 385, L. 1995.

2-1-405. Requirement for budget recommendation — reporting on federal mandates — savings. Prior to recommending to the legislature a budget for a state agency that is charged with implementing federal mandates, the governor shall require that the state agency provide information regarding any monetary savings for the state and any reduction in regulatory burdens on local governments and on the public that could be or have been achieved through the development of state policies that meet the intent of applicable federal statutes but do not necessarily follow all applicable federal regulations, guidelines, or policies. The state agency shall also provide advice to the governor regarding any changes in state statutes that are necessary to provide the state agency the authority to implement state policies in such a way as to create additional savings or greater reductions in regulatory burdens. The governor shall review and compile the information received from state agencies pursuant to this section and shall include recommendations in the governor's budget based upon the information.

History: En. Sec. 5, Ch. 385, L. 1995.

Cross-References

Budget systems and program plans, Title 17, ch. 7. part 1.

2-1-406. Information regarding federal mandates. (1) The information prepared pursuant to 2-1-405 must be received by the governor prior to the governor's preparation of the state budget for the ensuing biennium. The governor may prepare additional requests for information to follow up and obtain further details regarding the initial responses that were received.

(2) In considering the legality or cost-effectiveness of a federal mandate, federal statute, or state program, the governor may request assistance from the legislative council or its staff, but assistance is at the discretion of the legislative council.

History: En. Sec. 6, Ch. 385, L. 1995.

2-1-407. Report — recommendations. (1) The governor shall examine the information received pursuant to 2-1-405 and, based upon the information, shall present a report to the legislature meeting in its next regular session that includes the following:

(a) recommendations regarding contracts that the state may enter into with specified persons or entities to conduct research, to analyze certain subjects, or to provide other services regarding federal mandates; and

(b) estimates of the cost of the federal mandate efforts submitted to the governor under the provisions of 2-1-405.

(2) If there is a finding that a federal mandate does not meet Montana's cost-effective needs, does not serve Montana public policy, or does not conform to Montana customs and culture, the governor may issue an executive order declaring the intention of Montana to not implement the mandate and may direct the attorney general to vigorously represent the state of Montana in any action that results from or that is necessary to effect the executive order.

History: En. Sec. 7, Ch. 385, L. 1995.

2-1-408. Legislative review and oversight. (1) In exercising its authority as an equal branch of state government, the legislature may conduct any legal review or fiscal analysis that it considers necessary to effect the purpose and intent of this part. The governor, the director or chief executive officer of any agency within the executive branch, or any officer listed in Article VI, section 1, of the Montana constitution shall, upon request by the legislature, immediately provide any information prepared, compiled, developed, detailed, described, referenced, analyzed, reported, or in any other manner considered in conjunction with this part.

(2) In receiving the information described in subsection (1), the legislature is bound by the provisions of Article II, sections 9 and 10, of the Montana constitution.

(3) For the purposes of this section, the legislature includes the senate and the house of representatives, acting jointly or separately, and includes the legislative council.

(4) The legislature may request the assistance of any staff employed by the legislature.

History: En. Sec. 8, Ch. 385, L. 1995.

CHAPTER 2

STANDARDS OF CONDUCT

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Chapter Cross-References

Elected official's business disclosure statement, 2-2-106.

Arrest of public officer in certain civil actions involving officer's act or omission, 27-16-102.

Part 1
Code of Ethics

Part Cross-References

Impeachment, Art. V, sec. 13, Mont. Const.

Judges — removal and discipline, Art. VII, sec. 11, Mont. Const.

2-2-101. Statement of purpose. The purpose of this part is to set forth a code of ethics prohibiting conflict between public duty and private interest as required by the constitution of Montana. This code recognizes distinctions between legislators, other officers and employees of state government, and officers and employees of local government and prescribes some standards of conduct common to all categories and some standards of conduct adapted to each category. The provisions of this part recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances.

History: En. 59-1701 by Sec. 1, Ch. 569, L. 1977; R.C.M. 1947, 59-1701.

Cross-References

Constitutional mandate to provide code of ethics, Art. XIII, sec. 4, Mont. Const.

Code of fair campaign practices, 13-35-301.

2-2-102. Definitions. As used in this part, the following definitions apply:

(1) "Business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

(2) "Compensation" means any money or economic benefit conferred on or received by any person in return for services rendered or to be rendered by the person or another.

(3) (a) "Gift of substantial value" means a gift with a value of $50 or more for an individual.

(b) The term does not include:

(i) a gift that is not used and that, within 30 days after receipt, is returned to the donor or delivered to a charitable organization or the state and that is not claimed as a charitable contribution for federal income tax purposes;

(ii) food and beverages consumed on the occasion when participation in a charitable, civic, or community event bears a relationship to the public officer's or public employee's office or employment or when the officer or employee is in attendance in an official capacity;

(iii) educational material directly related to official governmental duties;

(iv) an award publicly presented in recognition of public service; or

(v) educational activity that:

(A) does not place or appear to place the recipient under obligation;

(B) clearly serves the public good; and

(C) is not lavish or extravagant.

(4) "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority.

(5) "Private interest" means an interest held by an individual that is:

(a) an ownership interest in a business;

(b) a creditor interest in an insolvent business;

(c) an employment or prospective employment for which negotiations have begun;

(d) an ownership interest in real property;

(e) a loan or other debtor interest; or

(f) a directorship or officership in a business.

(6) "Public employee" means:

(a) any temporary or permanent employee of the state or any subdivision of the state;

(b) a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority; and

(c) a person under contract to the state.

(7) "Public officer" includes any state officer. The term includes an elected officer of any subdivision of the state.

(8) (a) "State agency" includes:

(i) the state;

(ii) the legislature and its committees;

(iii) all executive departments, boards, commissions, committees, bureaus, and offices;

(iv) the university system; and

(v) all independent commissions and other establishments of the state government.

(b) The term does not include the judicial branch.

(9) "State officer" includes all elected officers and directors of the executive branch of state government as defined in 2-15-102.

History: En. 59-1702 by Sec. 2, Ch. 569, L. 1977; R.C.M. 1947, 59-1702; amd. Sec. 3, Ch. 18, L. 1995; amd. Sec. 1, Ch. 562, L. 1995.

2-2-103. Public trust — public duty. (1) The holding of public office or employment is a public trust, created by the confidence that the electorate reposes in the integrity of public officers, legislators, and public employees. A public officer, legislator, or public employee shall carry out the individual's duties for the benefit of the people of the state.

(2) A public officer, legislator, or public employee whose conduct departs from the person's public duty is liable to the people of the state and is subject to the penalties provided in this part for abuse of the public's trust.

(3) This part sets forth various rules of conduct, the transgression of any of which is a violation of public duty, and various ethical principles, the transgression of any of which must be avoided.

(4) (a) The enforcement of this part for:

(i) state officers, legislators, and state employees is provided for in 2-2-136 and 2-2-137;

(ii) legislators, involving legislative acts, is provided for in 2-2-135 and for all other acts is provided for in 2-2-136 and 2-2-137;

(iii) local government officers and employees is provided for in 2-2-144.

(b) Any money collected in the civil actions that is not reimbursement for the cost of the action must be deposited in the general fund of the unit of government.

History: En. 59-1703 by Sec. 3, Ch. 569, L. 1977; R.C.M. 1947, 59-1703; amd. Sec. 216, Ch. 685, L. 1989; amd. Sec. 2, Ch. 562, L. 1995.

Cross-References

All state officers and employees to be bonded, 2-9-602.

2-2-104. Rules of conduct for public officers, legislators, and public employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached the actor's public duty. A public officer, legislator, or public employee may not:

(a) disclose or use confidential information acquired in the course of official duties in order to further substantially the individual's personal economic interests; or

(b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:

(i) that would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties; or

(ii) that the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken.

(2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of the services. Campaign contributions reported as required by statute are not gifts or economic benefits tantamount to gifts.

(3) (a) Except as provided in subsection (3)(b), a public officer, legislator, or public employee may not receive salaries from two separate public employment positions that overlap for the hours being compensated, unless:

(i) the public officer, legislator, or public employee reimburses the public entity from which the employee is absent for the salary paid for performing the function from which the officer, legislator, or employee is absent; or

(ii) the public officer's, legislator's, or public employee's salary from one employer is reduced by the amount of salary received from the other public employer in order to avoid duplicate compensation for the overlapping hours.

(b) Subsection (3)(a) does not prohibit:

(i) a public officer, legislator, or public employee from receiving income from the use of accrued leave or compensatory time during the period of overlapping employment; or

(ii) a public school teacher from receiving payment from a college or university for the supervision of student teachers who are enrolled in a teacher education program at the college or university if the supervision is performed concurrently with the school teacher's duties for a public school district.

(c) In order to determine compliance with this subsection (3), a public officer, legislator, or public employee subject to this subsection (3) shall disclose the amounts received from the two separate public employment positions to the commissioner of political practices.

History: En. 59-1704 by Sec. 4, Ch. 569, L. 1977; R.C.M. 1947, 59-1704; amd. Sec. 3, Ch. 562, L. 1995; amd. Sec. 1, Ch. 243, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 243 inserted (3)(b)(ii) providing exception for payment for supervision by public school teacher; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Prohibited campaign practices, Title 13, ch. 35, part 2.

Reports of campaign contributions required, 13-37-225.

2-2-105. Ethical requirements for public officers and public employees. (1) The requirements in this section are intended as rules of conduct, and violations constitute a breach of the public trust and public duty of office or employment in state or local government.

(2) Except as provided in subsection (4), a public officer or public employee may not acquire an interest in any business or undertaking that the officer or employee has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by the officer's or employee's agency.

(3) A public officer or public employee may not, within 12 months following the voluntary termination of office or employment, obtain employment in which the officer or employee will take direct advantage, unavailable to others, of matters with which the officer or employee was directly involved during a term of office or during employment. These matters are rules, other than rules of general application, that the officer or employee actively helped to formulate and applications, claims, or contested cases in the consideration of which the officer or employee was an active participant.

(4) When a public employee who is a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority is required to take official action on a matter as to which the public employee has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety as to the public employee's influence, benefit, or detriment in regard to the matter, the public employee shall disclose the interest creating the conflict prior to participating in the official action.

(5) A public officer or public employee may not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when the officer or employee has a substantial personal interest in a competing firm or undertaking.

History: En. 59-1709 by Sec. 9, Ch. 569, L. 1977; R.C.M. 1947, 59-1709; amd. Sec. 4, Ch. 562, L. 1995.

Cross-References

Definitions of rules and contested cases relating to administrative rules, 2-4-102.

Public contracts generally, Title 18, ch. 1.

2-2-106. Disclosure. (1) (a) Prior to December 15 of each even-numbered year, each elected official or department director shall file with the commissioner a business disclosure statement on a form provided by the commissioner. An individual filing pursuant to subsection (1)(b) or (1)(c) is not required to file under this subsection (1)(a) during the same period.

(b) Each candidate for a statewide or a state office elected from a district shall, within 5 days of the time that the candidate files for office, file a business disclosure statement with the commissioner on a form provided by the commissioner.

(c) An individual appointed to office who would be required to file under subsection (1)(a) or (1)(b) is required to file the business disclosure statement at the earlier of the time of submission of the person's name for confirmation or the assumption of the office.

(2) The statement must provide the following information:

(a) the name, address, and type of business of the individual;

(b) each present or past employing entity from which benefits, including retirement benefits, are currently received by the individual;

(c) each business, firm, corporation, partnership, and other business or professional entity or trust in which the individual holds an interest;

(d) each entity not listed under subsections (2)(a) through (2)(c) in which the individual is an officer or director, regardless of whether or not the entity is organized for profit; and

(e) all real property, other than a personal residence, in which the individual holds an interest. Real property may be described by general description.

(3) An individual may not assume or continue to exercise the powers and duties of the office to which that individual has been elected or appointed until the statement has been filed as provided in subsection (1).

(4) The commissioner shall make the business disclosure statements available to any individual upon request.

History: En. Sec. 16, I.M. No. 85, approved Nov. 4, 1980; amd. Sec. 12, Ch. 562, L. 1995; Sec. 5-7-213, MCA 1993; redes. 2-2-106 by Code Commissioner, 1995.

2-2-107 through 2-2-110 reserved.

2-2-111. Rules of conduct for legislators. Proof of commission of any act enumerated in this section is proof that the legislator committing the act has breached the legislator's public duty. A legislator may not:

(1) accept a fee, contingent fee, or any other compensation, except the official compensation provided by statute, for promoting or opposing the passage of legislation;

(2) seek other employment for the legislator or solicit a contract for the legislator's services by the use of the office.

History: En. 59-1705 by Sec. 5, Ch. 569, L. 1977; R.C.M. 1947, 59-1705; amd. Sec. 5, Ch. 562, L. 1995.

Cross-References

Compensation of members of Legislature, Title 5, ch. 2, part 3.

2-2-112. Ethical requirements for legislators. (1) The requirements in this section are intended as rules for legislator conduct, and violations constitute a breach of the public trust of legislative office.

(2) A legislator has a responsibility to the legislator's constituents to participate in all matters as required in the rules of the legislature. A legislator concerned with the possibility of a conflict may briefly present the facts to the committee of that house that is assigned the determination of ethical issues. The committee shall advise the legislator as to whether the legislator should disclose the interest prior to voting on the issue pursuant to the provisions of subsection (5). The legislator may, subject to legislative rule, vote on an issue on which the legislator has a conflict, after disclosing the interest.

(3) When a legislator is required to take official action on a legislative matter as to which the legislator has a conflict created by a personal or private

interest that would directly give rise to an appearance of impropriety as to the legislator's influence, benefit, or detriment in regard to the legislative matter, the legislator shall disclose the interest creating the conflict prior to participating in the official action, as provided in subsections (2) and (5) and the rules of the legislature. In making a decision, the legislator shall consider:

(a) whether the conflict impedes the legislator's independence of judgment;

(b) the effect of the legislator's participation on public confidence in the integrity of the legislature;

(c) whether the legislator's participation is likely to have any significant effect on the disposition of the matter; and

(d) whether a pecuniary interest is involved or whether a potential occupational, personal, or family benefit could arise from the legislator's participation.

(4) A conflict situation does not arise from legislation or legislative duties affecting the membership of a profession, occupation, or class.

(5) A legislator shall disclose an interest creating a conflict, as provided in the rules of the legislature. A legislator who is a member of a profession, occupation, or class affected by legislation is not required to disclose an interest unless the class contained in the legislation is so narrow that the vote will have a direct and distinctive personal impact on the legislator. A legislator may seek a determination from the appropriate committee provided for in 2-2-135.

History: En. 59-1708 by Sec. 8, Ch. 569, L. 1977; R.C.M. 1947, 59-1708; amd. Sec. 6, Ch. 562, L. 1995.

Cross-References

Legislature — organization and procedure, Art. V, sec. 10, Mont. Const.

2-2-113 through 2-2-120 reserved.

2-2-121. Rules of conduct for public officers and public employees. (1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.

(2) A public officer or a public employee may not:

(a) use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes;

(b) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer's or employee's agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency;

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor and department director.

(3) A public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds for any campaign activity persuading or affecting a political decision unless the use is:

(a) authorized by law; or

(b) properly incidental to another activity required or authorized by law, such as the function of an elected public official, the official's staff, or the legislative staff in the normal course of duties.

(4) A state employee may not participate in a proceeding when an organization of which the employee is an officer or director is:

(a) involved in a proceeding before the employing state agency that is within the scope of the employee's job duties; or

(b) attempting to influence a local, state, or federal proceeding in which the employee represents the state.

(5) A state officer or state employee may not engage in any activity, including lobbying, as defined in 5-7-102, on behalf of an organization of which the officer or employee is a member while performing the officer's or employee's job duties. The provisions of this subsection do not prohibit an officer or employee from performing charitable fundraising activities if approved by the employee's supervisor or authorized by law.

(6) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute and if the person complies with the disclosure procedures under 2-2-131.

(7) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless the member is also a full-time public employee.

(8) A person who purposely or knowingly violates this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $50 or more than $1,000, by imprisonment in the county jail for not more than 6 months, or by both. A civil proceeding under 2-2-136 or 2-2-144 does not preclude an action under this subsection.

History: En. 59-1706 by Sec. 6, Ch. 569, L. 1977; R.C.M. 1947, 59-1706; amd. Sec. 1, Ch. 59, L. 1991; amd. Sec. 7, Ch. 562, L. 1995; amd. Sec. 3, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (4)(a), after "employing", inserted "state". Amendment effective March 12, 1997.

Cross-References

Quasi-judicial function defined, 2-15-102.

Unofficial use of state-owned motor vehicle — misdemeanor, 2-17-432.

Bribery, 45-7-101.

Compensation for past official behavior — misdemeanor, 45-7-103.

2-2-122 through 2-2-124 reserved.

2-2-125. Rules of conduct for local government officers and employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached a public duty subjecting the actor to disciplinary action by the employing entity.

(2) An officer or employee of local government may not:

(a) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties; or

(b) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent.

(3) Notwithstanding the provisions of subsection (2), a member of the governing body of a local government may perform an official act when the member's participation is necessary to obtain a quorum or otherwise enable the body to act. The member shall disclose the interest creating the appearance of impropriety.

History: En. 59-1707 by Sec. 7, Ch. 569, L. 1977; R.C.M. 1947, 59-1707; amd. Sec. 8, Ch. 562, L. 1995.

2-2-126 through 2-2-130 reserved.

2-2-131. Disclosure. A public officer or public employee shall, prior to acting in a manner that may impinge on public duty, including the award of a permit, contract, or license, disclose the nature of the private interest that creates the conflict. The public officer or public employee shall make the disclosure in writing to the secretary of state, listing the amount of private interest, if any, the purpose and duration of the person's services rendered, if any, and the compensation received for the services or other information that is necessary to describe the interest. If the public officer or public employee then performs the official act involved, the officer or employee shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act.

History: En. 59-1710 by Sec. 10, Ch. 569, L. 1977; R.C.M. 1947, 59-1710; amd. Sec. 9, Ch. 562, L. 1995.

2-2-132. Repealed. Sec. 22, Ch. 562, L. 1995.

History: En. 59-1711 by Sec. 11, Ch. 569, L. 1977; R.C.M. 1947, 59-1711.

2-2-133 and 2-2-134 reserved.

2-2-135. Ethics committees. (1) Each house of the legislature shall establish an ethics committee. The committee must consist of two members of each political party. The committees may meet jointly. Each committee shall educate members concerning the provisions of this part concerning legislators and may consider conflicts between public duty and private interest as provided in 2-2-112. The joint committee may consider matters affecting the entire legislature.

(2) Pursuant to Article V, section 10, of the Montana constitution, the legislature is responsible for enforcement of the provisions of this part concerning legislators.

History: En. Sec. 14, Ch. 562, L. 1995.

2-2-136. Enforcement for state officers, legislators, and state employees. (1) (a) A person alleging a violation of this part by a state officer, legislator, or state employee may file a complaint with the commissioner of political practices. The commissioner does not have jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint. The commissioner shall request any information necessary to make a determination from the complainant or the person who is the subject of the complaint and may issue subpoenas.

(b) Unless the complaint is referred to the county attorney under subsection (1)(c), the commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter 4, part 6. The commissioner shall issue a decision based upon the record established before the commissioner.

(c) If it appears to the commissioner that a complaint alleges criminal conduct, the commissioner shall stay the proceedings under this section and refer the matter to the appropriate county attorney.

(2) If the commissioner determines that a violation of this part has occurred, the commissioner may impose an administrative penalty of not less than $50 or more than $1,000, and if the violation was committed by a state employee, the commissioner may also recommend that the employing state agency discipline the employee. The commissioner may assess the costs of the proceeding against the person bringing the charges if the commissioner determines that a violation did not occur or against the officer or employee if the commissioner determines that a violation did occur.

(3) The decision of the commissioner may be appealed to the ethics commission as provided in 2-2-137.

(4) Except for records made public in the course of a hearing, a complaint and records obtained or prepared by the commissioner in connection with an investigation or complaint are not open for public inspection. The commissioner's decision issued after a hearing is a public record open to inspection.

(5) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part.

History: En. Sec. 15, Ch. 562, L. 1995; amd. Sec. 4, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (2), in first sentence after "employing", inserted "state". Amendment effective March 12, 1997.

Cross-References

Commissioner of Political Practices, Title 13, ch. 37, part 1.

2-2-137. Administrative appeal. (1) The ethics commission shall provide a hearing on the record, when requested in writing by a party to an issue that has been decided by the commissioner of political practices. The appeal must be requested within 60 days of a decision by the commissioner.

(2) The hearing is limited to matters contained in the record established before the commissioner. The commission may affirm, modify, or reverse a decision of the commissioner.

(3) A decision is rendered when signed by three or more commission members subscribing to the decision and must be issued within 30 calendar days after submission of the request for an opinion.

(4) If the decision is appealed, as provided in Title 2, chapter 4, part 7, the district court may award costs and fees to the prevailing party.

History: En. Sec. 16, Ch. 562, L. 1995.

2-2-138. Ethics commission. (1) There is an ethics commission attached to the office of the commissioner of political practices for administrative purposes only.

(2) The commission consists of five members. The members are appointed in the same manner as prescribed in 5-1-102, except that the presiding officer and vice presiding officer must be chosen as provided in subsection (6) of this

section. A member of the commission must be a citizen of the United States and a resident of Montana. A member of the commission may not be a:

(a) public official;

(b) public employee, except as the fifth member, who must be chosen by consensus of the other members;

(c) candidate;

(d) lobbyist or lobbyist's principal; or

(e) member of the immediate family of an individual listed in subsections (2)(a) through (2)(d).

(3) A member of the commission serves a term of 4 years. However, the initial members of the commission shall serve the following terms:

(a) One member shall serve a term of 1 year.

(b) One member shall serve a term of 2 years.

(c) One member shall serve a term of 3 years.

(d) Two members shall serve terms of 4 years.

(4) An individual may not serve more than two consecutive terms as a member of the commission. A member of the commission continues in office until a successor is appointed and has qualified.

(5) (a) If a vacancy occurs on the commission, the appointing authority of the vacant position shall appoint a successor.

(b) If at the time that a vacancy occurs the appointing authority is of a different political party than that of the original appointing authority, the majority or minority leader in the same house who is of the same political party as the appointing authority that made the original appointment of the commissioner whose position is vacated shall appoint the successor.

(6) The presiding officer and vice presiding officer of the commission must be elected by a majority of the members of the commission. The presiding officer and vice presiding officer shall serve in those positions for 1 year and may be reelected. The presiding officer presides at meetings of the commission. The vice presiding officer presides in the absence or disability of the presiding officer.

(7) A member of the commission may not receive a salary but is entitled to expenses as provided in Title 2, chapter 18, part 5.

History: En. Sec. 17, Ch. 562, L. 1995.

2-2-139. Meetings — quorum. The ethics commission shall meet at the call of the presiding officer or a majority of its members when an appeal from a decision of the commissioner of political practices under this part is requested. A quorum consists of three or more members. An affirmative vote of three or more members is necessary for the issuance of a decision.

History: En. Sec. 18, Ch. 562, L. 1995.

2-2-140 and 2-2-141 reserved.

2-2-142. Prohibition on political activity by commission members. A member of the ethics commission may not participate in political activity or in a political campaign during the term of office. A member of the commission may not:

(1) make a financial contribution to a candidate;

(2) make a financial contribution to a political committee; or

(3) knowingly attend a fundraiser held for the benefit of a candidate or political committee.

History: En. Sec. 19, Ch. 562, L. 1995.

2-2-143. Prohibition on lobbying activity. A member of the ethics commission may not be a registered lobbyist or participate in lobbying activities that would require the individual to register as a lobbyist unless the lobbyist activities are conducted on behalf of the commission and are permitted under state law.

History: En. Sec. 20, Ch. 562, L. 1995.

Cross-References

Lobbying, Title 5, ch. 7.

2-2-144. Enforcement for local government. (1) Except as provided in subsection (5), a person alleging a violation of this part by a local government officer or local government employee shall notify the county attorney of the county where the local government is located. The county attorney shall request from the complainant or the person who is the subject of the complaint any information necessary to make a determination concerning the validity of the complaint.

(2) If the county attorney determines that the complaint is justified, the county attorney may bring an action in district court seeking a civil fine of not less than $50 or more than $1,000. If the county attorney determines that the complaint alleges a criminal violation, the county attorney shall bring criminal charges against the officer or employee.

(3) If the county attorney declines to bring an action under this section, the person alleging a violation of this part may file a civil action in district court seeking a civil fine of not less than $50 or more than $1,000. In an action filed under this subsection, the court may assess the costs and attorney fees against the person bringing the charges if the court determines that a violation did not occur or against the officer or employee if the court determines that a violation did occur. The court may impose sanctions if the court determines that the action was frivolous or intended for harassment.

(4) The employing entity of a local government employee may take disciplinary action against an employee for a violation of this part.

(5) (a) A local government may establish a three-member panel to review complaints alleging violations of this part by officers or employees of the local government. The local government shall establish procedures and rules for the panel. The members of the panel may not be officers or employees of the local government. The panel shall review complaints and may refer to the county attorney complaints that appear to be substantiated.

(b) In a local government that establishes a panel under this subsection, a complaint must be referred to the panel prior to making a complaint to the county attorney.

(6) For purposes of this section, "local government" means a county, an incorporated city or town, a consolidated government, or a school district.

History: En. Sec. 21, Ch. 562, L. 1995.

Part 2

Proscribed Acts Related to Contracts and Claims

2-2-201. Public officers, employees, and former employees not to have interest in contracts — local government waiver. (1) Members of the legislature; state, county, city, town, or township officers; or any deputy or employee of an enumerated governmental entity may not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees. A former employee may not, within 6 months following the termination of employment, contract or be employed by an employer who contracts with the state or any of its subdivisions involving matters with which the former employee was directly involved during employment. In this section the term:

(a) "be interested in" does not include holding a minority interest in a corporation;

(b) "contract" does not include:

(i) contracts awarded to the lowest responsible bidder or proposer based on competitive bidding procedures;

(ii) merchandise sold to the highest bidder at public auctions;

(iii) investments or deposits in financial institutions that are in the business of loaning or receiving money;

(iv) a contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It is presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than 10% of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.

(c) "former employee" does not include a person whose employment with the state was involuntarily terminated due to a reduction in force or other involuntary termination not involving violation of the provisions of this chapter.

(2) The governing body of a city, town, or county may waive the application of the prohibition contained in subsection (1) for a present or former city, town, or county officer or employee who in an official capacity does not influence the decisionmaking process or supervise a function regarding the contract in question. A governing body may grant a waiver under this subsection only after publicly disclosing the nature of the conflict at an advertised public hearing held for that purpose. In determining whether to grant a waiver, the governing body shall consider the following factors, where applicable:

(a) whether the waiver would provide to a program or project a significant benefit or an essential skill or expertise that would otherwise not be available;

(b) whether an opportunity was provided for open competitive bidding or negotiation;

(c) whether the person affected is a member of a clearly identified group of persons that is the intended beneficiary of the program or project involved in the contract; and

(d) whether the hardship imposed on the affected person or the governmental entity by prohibiting the conflict will outweigh the public interest served by avoiding the conflict.

History: En. Sec. 1020, Pol. C. 1895; re-en. Sec. 368, Rev. C. 1907; re-en. Sec. 444, R.C.M. 1921; Cal. Pol. C. Sec. 920; re-en. Sec. 444, R.C.M. 1935; amd. Sec. 1, Ch. 43, L. 1973; R.C.M. 1947, 59-501; amd. Sec. 1, Ch. 377, L. 1979; amd. Sec. 1, Ch. 458, L. 1981; amd. Sec. 1, Ch. 65, L. 1991; amd. Sec. 1, Ch. 322, L. 1993.

Cross-References

Ethical principles relating to interest in contract, 2-2-105, 2-2-121, 2-2-125.

Transfers and collusion prohibited, 18-4-141.

2-2-202. Public officers not to have interest in sales or purchases. State, county, town, township, and city officers must not be purchasers at any sale or vendors at any purchase made by them in their official capacity.

History: En. Sec. 1021, Pol. C. 1895; re-en. Sec. 369, Rev. C. 1907; re-en. Sec. 445, R.C.M. 1921; Cal. Pol. C. Sec. 921; re-en. Sec. 445, R.C.M. 1935; R.C.M. 1947, 59-502.

2-2-203. Voidable contracts. Every contract made in violation of any of the provisions of 2-2-201 or 2-2-202 may be avoided at the instance of any party except the officer interested therein.

History: En. Sec. 1022, Pol. C. 1895; re-en. Sec. 370, Rev. C. 1907; re-en. Sec. 446, R.C.M. 1921; Cal. Pol. C. Sec. 922; re-en. Sec. 446, R.C.M. 1935; R.C.M. 1947, 59-503.

2-2-204. Dealings in warrants and other claims prohibited. The state officers, the several county, city, town, and township officers of this state, their deputies and clerks, are prohibited from purchasing or selling or in any manner receiving to their own use or benefit or to the use or benefit of any person or persons whatever any state, county, or city warrants, scrip, orders, demands, claims, or other evidences of indebtedness against the state or any county, city, town, or township thereof except evidences of indebtedness issued to or held by them for services rendered as such officer, deputy, clerk, and evidences of the funded indebtedness of such state, county, city, township, town, or corporation.

History: En. Sec. 1023, Pol. C. 1895; re-en. Sec. 371, Rev. C. 1907; re-en. Sec. 447, R.C.M. 1921; Cal. Pol. C. Sec. 923; re-en. Sec. 447, R.C.M. 1935; R.C.M. 1947, 59-504.

2-2-205. Affidavit to be required by auditing officers. Every officer whose duty it is to audit and allow the accounts of other state, county, city, township, or town officers must, before allowing such accounts, require each of such officers to make and file with him an affidavit that he has not violated any of the provisions of this part.

History: En. Sec. 1024, Pol. C. 1895; re-en. Sec. 372, Rev. C. 1907; re-en. Sec. 448, R.C.M. 1921; Cal. Pol. C. Sec. 924; re-en. Sec. 448, R.C.M. 1935; R.C.M. 1947, 59-505.

2-2-206. Officers not to pay illegal warrant. Officers charged with the disbursement of public moneys must not pay any warrant or other evidence of indebtedness against the state, county, city, town, or township when the same has been purchased, sold, received, or transferred contrary to any of the provisions of this part.

History: En. Sec. 1025, Pol. C. 1895; re-en. Sec. 373, Rev. C. 1907; re-en. Sec. 449, R.C.M. 1921; Cal. Pol. C. Sec. 925; re-en. Sec. 449, R.C.M. 1935; R.C.M. 1947, 59-506.

2-2-207. Settlements to be withheld on affidavit. (1) Every officer charged with the disbursement of public moneys who is informed by affidavit establishing probable cause that any officer whose account is about to be settled, audited, or paid by him has violated any of the provisions of this part must suspend such settlement or payment and cause such officer to be prosecuted for such violation by the county attorney of the county.

(2) In case there be judgment for the defendant upon such prosecution, the proper officer may proceed to settle, audit, or pay such account as if no such affidavit had been filed.

History: En. Sec. 1026, Pol. C. 1895; re-en. Sec. 374, Rev. C. 1907; re-en. Sec. 450, R.C.M. 1921; Cal. Pol. C. Sec. 926; re-en. Sec. 450, R.C.M. 1935; R.C.M. 1947, 59-507.

Part 3

Nepotism

Part Cross-References

Discrimination in employment, 49-2-303.

Employment of state and local government personnel, 49-3-201.

2-2-301. Nepotism defined. Nepotism is the bestowal of political patronage by reason of relationship rather than of merit.

History: En. Sec. 1, Ch. 12, L. 1933; re-en. Sec. 456.1, R.C.M. 1935; R.C.M. 1947, 59-518.

2-2-302. Appointment of relative to office of trust or emolument unlawful — exceptions — publication of notice. (1) Except as provided in subsection (2), it is unlawful for a person or member of any board, bureau, or commission or employee at the head of a department of this state or any political subdivision of this state to appoint to any position of trust or emolument any person related or connected by consanguinity within the fourth degree or by affinity within the second degree.

(2) The provisions of this section and 2-2-303 do not apply to:

(a) a sheriff in the appointment of a person as a cook or an attendant;

(b) school district trustees if all the trustees, with the exception of any trustee who is related to the person being appointed and who must abstain from voting for the appointment, approve the appointment of a person related to a trustee;

(c) a school district in the employment of a person as a substitute teacher who is not employed as a substitute teacher for more than 30 consecutive school days;

(d) the renewal of an employment contract of a person who was initially hired before the member of the board, bureau, or commission or the department head to whom the person is related assumed the duties of the office;

(e) the employment of election judges; or

(f) the employment of pages or temporary session staff by the legislature.

(3) Prior to the appointment of a person referred to in subsection (2), the school district trustees shall give written notice of the time and place of their intended action. The notice must be published at least 15 days prior to the trustees' intended action in a newspaper of general circulation in the county in which the school district is located.

History: En. Sec. 2, Ch. 12, L. 1933; re-en. Sec. 456.2, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1955; amd. Sec. 27, Ch. 535, L. 1975; R.C.M. 1947, 59-519(part); amd. Sec. 1, Ch. 117, L. 1987; amd. Sec. 1, Ch. 55, L. 1991; amd. Sec. 1, Ch. 238, L. 1991; amd. Sec. 10, Ch. 562, L. 1995.

Cross-References
Affinity, 1-1-219.
Consanguinity, 72-11-102 through 72-11-104.

2-2-303. Agreements to appoint relative to office unlawful. It shall further be unlawful for any person or any member of any board, bureau, or commission or employee of any department of this state or any political subdivision thereof to enter into any agreement or any promise with other persons or any members of any boards, bureaus, or commissions or employees of any department of this state or any of its political subdivisions thereof to appoint to any position of trust or emolument any person or persons related to them or connected with them by consanguinity within the fourth degree or by affinity within the second degree.

History: En. Sec. 2, Ch. 12, L. 1933; re-en. Sec. 456.2, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1955; amd. Sec. 27, Ch. 535, L. 1975; R.C.M. 1947, 59-519(part).

2-2-304. Penalty for violation of nepotism law. Any public officer or employee or any member of any board, bureau, or commission of this state or any political subdivision thereof who shall, by virtue of his office, have the right to make or appoint any person to render services to this state or any subdivision thereof and who shall make or appoint to such services or enter into any agreement or promise with any other person or employee or any member of any board, bureau, or commission of any other department of this state or any of its subdivisions to appoint to any position any person or persons related to him or them or connected with him or them by consanguinity within the fourth degree or by affinity within the second degree shall thereby be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not less than $50 or more than $1,000 or by imprisonment in the county jail for not more than 6 months or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 12, L. 1933; re-en. Sec. 456.3, R.C.M. 1935; R.C.M. 1947, 59-520; amd. Sec. 1, Ch. 253, L. 1989.

CHAPTER 3

PUBLIC PARTICIPATION IN GOVERNMENTAL OPERATIONS

Part 1 — Notice and Opportunity to Be Heard

2-3-101. Legislative intent.
2-3-102. Definitions.
2-3-103. Public participation — governor to insure guidelines adopted.
2-3-104. Requirements for compliance with notice provisions.
2-3-105. Supplemental notice by radio or television.
2-3-106. Period for which copy retained.
2-3-107. Proof of publication by broadcast.
2-3-108 through 2-3-110 reserved.
2-3-111. Opportunity to submit views — public hearings.
2-3-112. Exceptions.
2-3-113. Declaratory rulings to be published.
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Part 2 — Open Meetings

2-3-201. Legislative intent — liberal construction.
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2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public — exceptions.
2-3-204 through 2-3-210 reserved.
2-3-211. Recording.
2-3-212. Minutes of meetings — public inspection.
2-3-213. Voidability.
2-3-214 through 2-3-220 reserved.
2-3-221. Costs to plaintiff in certain actions to enforce constitutional right to know.

Chapter Cross-References

Government Accountability Act, Title 2, ch. 11, part 1.

Part 1

Notice and Opportunity to Be Heard

2-3-101. Legislative intent. The legislature finds and declares pursuant to the mandate of Article II, section 8, of the 1972 Montana constitution that legislative guidelines should be established to secure to the people of Montana their constitutional right to be afforded reasonable opportunity to participate in the operation of governmental agencies prior to the final decision of the agency.

History: En. 82-4226 by Sec. 1, Ch. 491, L. 1975; R.C.M. 1947, 82-4226.

2-3-102. Definitions. As used in this part, the following definitions apply:

(1) "Agency" means any board, bureau, commission, department, authority, or officer of the state or local government authorized by law to make rules, determine contested cases, or enter into contracts except:

(a) the legislature and any branch, committee, or officer thereof;

(b) the judicial branches and any committee or officer thereof;

(c) the governor, except that an agency is not exempt because the governor has been designated as a member thereof; or

(d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack.

(2) "Agency action" means the whole or a part of the adoption of an agency rule, the issuance of a license or order, the award of a contract, or the equivalent or denial thereof.

(3) "Rule" means any agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; or

(b) declaratory rulings as to the applicability of any statutory provision or of any rule.

History: En. 82-4227 by Sec. 2, Ch. 491, L. 1975; amd. Sec. 23, Ch. 285, L. 1977; amd. Sec. 1, Ch. 452, L. 1977; R.C.M. 1947, 82-4227(part); amd. Sec. 1, Ch. 243, L. 1979.

2-3-103. Public participation — governor to insure guidelines adopted. (1) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures shall assure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public.

(2) The governor shall insure that each board, bureau, commission, department, authority, agency, or officer of the state adopts coordinated rules for its programs, which guidelines shall provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1) of this section. These guidelines shall be adopted as rules and published in a manner which may be provided to a member of the public upon request.

History: En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(1), (5).

Cross-References

Right of public participation in government, Art. II, sec. 8, Mont. Const.

Adoption of rules, 2-4-302.

Publication of rules — availability, 2-4-312.

2-3-104. Requirements for compliance with notice provisions. An agency shall be considered to have complied with the notice provisions of 2-3-103 if:

(1) an environmental impact statement is prepared and distributed as required by the Montana Environmental Policy Act, Title 75, chapter 1;

(2) a proceeding is held as required by the Montana Administrative Procedure Act;

(3) a public hearing, after appropriate notice is given, is held pursuant to any other provision of state law or a local ordinance or resolution; or

(4) a newspaper of general circulation within the area to be affected by a decision of significant interest to the public has carried a news story or advertisement concerning the decision sufficiently prior to a final decision to permit public comment on the matter.

History: En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(2).

Cross-References

Montana Administrative Procedure Act — proceedings, 2-4-302, 2-4-306, 2-4-601.

Publication and content of local government notices, 7-1-2121.

2-3-105. Supplemental notice by radio or television. (1) Any official of the state or any of its political subdivisions who is required by law to publish any notice required by law may supplement such publication by a radio or television broadcast of a summary of such notice or by both of such broadcasts when in his judgment the public interest will be served.

(2) The summary of such notice shall only be read with no reference to any person by name then a candidate for political office.

(3) Such announcements shall be made only by duly employed personnel of the station from which such broadcast emanates.

(4) Announcements by political subdivisions may be made only by stations situated within the county of origin of the legal notice unless no broadcast station exists in such county, in which case announcements may be made by a station or stations situated in any county other than the county of origin of the legal notice.

History: En. Sec. 1, Ch. 149, L. 1963; R.C.M. 1947, 19-201.

2-3-106. Period for which copy retained. Each radio or television station broadcasting any summary of a legal notice shall for a period of 6 months subsequent to such broadcast retain at its office a copy or transcription of the text of the summary as actually broadcast, which shall be available for public inspection.

History: En. Sec. 2, Ch. 149, L. 1963; R.C.M. 1947, 19-202.

2-3-107. Proof of publication by broadcast. Proof of publication of a summary of any notice by radio or television broadcast shall be by affidavit of the manager, an assistant manager, or a program director of the radio or television station broadcasting the same.

History: En. Sec. 3, Ch. 149, L. 1963; R.C.M. 1947, 19-203.

Cross-References

Affidavits — generally, Title 26, ch. 1, part 10.

Affidavit defined, 26-1-1001.

2-3-108 through 2-3-110 reserved.

2-3-111. Opportunity to submit views — public hearings. (1) Procedures for assisting public participation must include a method of affording interested persons reasonable opportunity to submit data, views, or arguments, orally or in written form, prior to making a final decision that is of significant interest to the public.

(2) When a state agency other than the board of regents proposes to take an action that directly impacts a specific community or area and a public hearing is held, the hearing must be held in an accessible facility in the impacted community or area or in the nearest community or area with an accessible facility.

History: En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(3); amd. Sec. 1, Ch. 487, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 487 inserted (2) requiring that public hearing be held in accessible facility in impacted community or area when agency action directly impacts community or area; and made minor changes in style.

Cross-References

Right of public participation in government, Art. II, sec. 8, Mont. Const.

2-3-112. Exceptions. The provisions of 2-3-103 and 2-3-111 do not apply to:

(1) an agency decision that must be made to deal with an emergency situation affecting the public health, welfare, or safety;

(2) an agency decision that must be made to maintain or protect the interests of the agency, including but not limited to the filing of a lawsuit in a court of law or becoming a party to an administrative proceeding; or

(3) a decision involving no more than a ministerial act.

History: En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(4).

Cross-References

Emergency rules, 2-4-303.

Disaster and emergency services, Title 10, ch. 3.

2-3-113. Declaratory rulings to be published. The declaratory rulings of any board, bureau, commission, department, authority, agency, or officer of the state which is not subject to the Montana Administrative Procedure Act shall be published and be subject to judicial review as provided under 2-4-623(6) and 2-4-501, respectively.

History: En. 82-4227 by Sec. 2, Ch. 491, L. 1975; amd. Sec. 23, Ch. 285, L. 1977; amd. Sec. 1, Ch. 452, L. 1977; R.C.M. 1947, 82-4227(part); amd. Sec. 3, Ch. 184, L. 1979.

2-3-114. Enforcement. The district courts of the state have jurisdiction to set aside an agency decision under this part upon petition made within 30 days of the date of the decision of any person whose rights have been prejudiced.

History: En. 82-4229 by Sec. 4, Ch. 491, L. 1975; amd. Sec. 25, Ch. 285, L. 1977; R.C.M. 1947, 82-4229.

Part 2

Open Meetings

2-3-201. Legislative intent — liberal construction. The legislature finds and declares that public boards, commissions, councils, and other public agencies in this state exist to aid in the conduct of the peoples' business. It is the intent of this part that actions and deliberations of all public agencies shall be conducted openly. The people of the state do not wish to abdicate their sovereignty to the agencies which serve them. Toward these ends, the provisions of the part shall be liberally construed.

History: En. Sec. 1, Ch. 159, L. 1963; R.C.M. 1947, 82-3401.

Cross-References

Right of public to examine documents or to observe deliberations of public bodies, Art. II, sec. 9, Mont. Const.

2-3-202. Meeting defined. As used in this part, "meeting" means the convening of a quorum of the constituent membership of a public agency or association described in 2-3-203, whether corporal or by means of electronic equipment, to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.

History: En. 82-3404 by Sec. 2, Ch. 567, L. 1977; R.C.M. 1947, 82-3404; amd. Sec. 2, Ch. 183, L. 1987.

2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public — exceptions. (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds must be open to the public.

(2) All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the public.

(3) Provided, however, the presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be open.

(4) (a) However, except as provided in subsection (4)(b), a meeting may be closed to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position of the public agency.

(b) A meeting may not be closed to discuss strategy to be followed in litigation in which the only parties are public bodies or associations described in subsections (1) and (2).

(5) Any committee or subcommittee appointed by a public body or an association described in subsection (2) for the purpose of conducting business which is within the jurisdiction of that agency is subject to the requirements of this section.

History: En. Sec. 2, Ch. 159, L. 1963; amd. Sec. 1, Ch. 474, L. 1975; amd. Sec. 1, Ch. 567, L. 1977; R.C.M. 1947, 82-3402; amd. Sec. 1, Ch. 380, L. 1979; amd. Sec. 1, Ch. 183, L. 1987; amd. Sec. 1, Ch. 123, L. 1993.

Cross-References

Right of public to observe deliberations of all public bodies, Art. II, sec. 9, Mont. Const.

Right of individual privacy, Art. II, sec. 10, Mont. Const.

Legislature — organization and procedure, Art. V, sec. 10, Mont. Const.

Notice of agency action required, 2-3-103.

Deliberations of Medical Legal Panel to be secret, 27-6-603.

Criminal penalty for closed meeting — official misconduct, 45-7-401.

2-3-204 through 2-3-210 reserved.

2-3-211. Recording. Accredited press representatives may not be excluded from any open meeting under this part and may not be prohibited from taking photographs, televising, or recording such meetings. The presiding officer may assure that such activities do not interfere with the conduct of the meeting.

History: En. 82-3405 by Sec. 4, Ch. 567, L. 1977; R.C.M. 1947, 82-3405.

2-3-212. Minutes of meetings — public inspection. (1) Appropriate minutes of all meetings required by 2-3-203 to be open shall be kept and shall be available for inspection by the public.

(2) Such minutes shall include without limitation:

(a) date, time, and place of meeting;

(b) a list of the individual members of the public body, agency, or organization in attendance;

(c) the substance of all matters proposed, discussed, or decided; and

(d) at the request of any member, a record by individual members of any votes taken.

History: En. Sec. 3, Ch. 159, L. 1963; amd. Sec. 3, Ch. 567, L. 1977; R.C.M. 1947 82-3403.

Cross-References

Citizens entitled to inspect and copy records, 2-6-102.

Records open to public inspection, 2-6-104

2-3-213. Voidability. Any decision made in violation of 2-3-203 may be declared void by a district court having jurisdiction. A suit to void any such decision must be commenced within 30 days of the decision.

History: En. 82-3406 by Sec. 5, Ch. 567, L. 1977; R.C.M. 1947, 82-3406.

2-3-214 through 2-3-220 reserved.

2-3-221. Costs to plaintiff in certain actions to enforce constitutional right to know. A plaintiff who prevails in an action brought in distric court to enforce his rights under Article II, section 9, of the Montana constitution may be awarded his costs and reasonable attorneys' fees.

History: En. 93-8632 by Sec. 1, Ch. 493, L. 1975; R.C.M. 1947, 93-8632.

CHAPTER 4

ADMINISTRATIVE PROCEDURE ACT

Part 1 — General Provisions

2-4-101. Short title.
2-4-102. Definitions.
2-4-103. Rules and statements to be made available to public.
2-4-104. Subpoenas and enforcement — compelling testimony.
2-4-105. Representation by counsel.
2-4-106. Service.
2-4-107. Construction and effect.
2-4-108 and 2-4-109 reserved.
2-4-110. Departmental review of rule notices.

Part 2 — Organizational and Procedural Rules

2-4-201. Rules describing agency organization and procedures.
2-4-202. Model rules.

Part 3 — Adoption and Publication of Rules

2-4-301. Authority to adopt not conferred.
2-4-302. Notice, hearing, and submission of views.
2-4-303. Emergency or temporary rules.
2-4-304. Informal conferences and committees.
2-4-305. Requisites for validity — authority and statement of reasons.
2-4-306. Filing, format, and effective date — dissemination of emergency rules.
2-4-307. Omissions from ARM or register.
2-4-308. Adjective or interpretive rule — statement of implied authority and legal effect.
2-4-309 and 2-4-310 reserved.
2-4-311. Publication and arrangement of ARM.
2-4-312. Publication and arrangement of register.
2-4-313. Distribution, costs, and maintenance.
2-4-314. Biennial review by agencies — recommendations by committee.
2-4-315. Petition for adoption, amendment, or repeal of rules.
2-4-316 through 2-4-320 reserved.
2-4-321. Repealed.
2-4-322. Repealed.
2-4-323. Repealed.

Part 4 — Legislative Review of Rules

2-4-401. Administrative code committee — staff, meetings, and compensation.
2-4-402. Powers of the committee — duty to review rules — exception for revenue rules.
2-4-403. Legislative intent — poll.
2-4-404. Evidentiary value of legislative poll.
2-4-405. Economic impact statement.
2-4-406. Committee objection to violation of authority for rule — effect.
2-4-407 through 2-4-409 reserved.
2-4-410. Report of litigation.
2-4-411. Report.
2-4-412. Legislative review of rules — effect of failure to object.

Part 5 — Judicial Notice and Declaratory Rulings

2-4-501. Declaratory rulings by agencies.
2-4-502 through 2-4-504 reserved.
2-4-505. Judicial notice of rules.
2-4-506. Declaratory judgments on validity or application of rules.

Part 6 — Contested Cases

2-4-601. Notice.
2-4-602. Discovery.
2-4-603. Informal disposition and hearings — waiver of administrative proceedings.
2-4-604. Informal proceedings.
2-4-605 through 2-4-610 reserved.
2-4-611. Hearing examiners — legal services unit — conduct of hearings — disqualification of hearing examiners and agency members.
2-4-612. Hearing — rules of evidence, cross-examination, judicial notice.
2-4-613. Ex parte consultations.
2-4-614. Record — transcription.
2-4-615 through 2-4-620 reserved.
2-4-621. When absent members render decision — proposal for decision and opportunity to submit findings and conclusions — modification by agency.
2-4-622. When hearings officer unavailable for decision.
2-4-623. Final orders — notification — availability.
2-4-624 through 2-4-630 reserved.
2-4-631. Licenses.

Part 7 — Judicial Review of Contested Cases

2-4-701. Immediate review of agency action.
2-4-702. Initiating judicial review of contested cases.
2-4-703. Receipt of additional evidence.
2-4-704. Standards of review.
2-4-705 through 2-4-710 reserved.
2-4-711. Appeals — staying agency decision.

Part 1

General Provisions

Part Cross-References

Montana Negotiated Rulemaking Act, Title 2, ch. 5, part 1.

2-4-101. Short title. This chapter shall be known and may be cited as the "Montana Administrative Procedure Act".

History: En. Sec. 1, Ch. 2, Ex. L. 1971; amd. Sec. 1, Ch. 285, L. 1977; R.C.M. 1947, 82-4201.

2-4-102. Definitions. For purposes of this chapter, the following definitions apply:

(1) "Administrative code committee" or "committee" means the committee provided for in Title 5, chapter 14.

(2) (a) "Agency" means an agency, as defined in 2-3-102, of the state government, except that the provisions of this chapter do not apply to the following:

(i) the state board of pardons and parole, except that the board is subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the ARM and the register;

(ii) the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;

(iii) the board of regents and the Montana university system;

(iv) the financing, construction, and maintenance of public works;

(v) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C. 252 and 69-3-837.

(b) Agency does not include a school district, unit of local government, or any other political subdivision of the state.

(3) "ARM" means the Administrative Rules of Montana.

(4) "Contested case" means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(5) "Interested person" means a person who has expressed to the agency an interest concerning agency actions under this chapter and has requested to be placed on the agency's list of interested persons as to matters of which the person desires to be given notice. The term does not extend to contested cases.

(6) "License" includes the whole or part of an agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(7) "Licensing" includes an agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(8) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but this chapter may not be construed to prevent an agency from admitting any person as a party for limited purposes.

(9) "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

(10) "Register" means the Montana Administrative Register.

(11) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(c) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

(d) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules is indicated to the public by means of signs or signals;

(e) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(f) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the ARM.

(12) "Significant interest to the public" means agency actions under this chapter regarding matters that the agency knows to be of widespread citizen

interest. These matters include issues involving a substantial fiscal impact to or controversy involving a particular class or group of individuals. The term does not extend to contested cases.

(13) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law.

History: (1), (3), (9)En. by Code Commissioner, 1979; (2), (4) thru (8), (10), (11)En. Sec. 2, Ch. 2, Ex. L. 1971; amd. Sec. 2, Ch. 285, L. 1977; Sec. 82-4202, R.C.M. 1947; R.C.M. 1947, 82-4202; amd. Sec. 4, Ch. 184, L. 1979; amd. Sec. 2, Ch. 243, L. 1979; amd. Sec. 1, Ch. 671, L. 1985; amd. Sec. 1, Ch. 340, L. 1991; amd. Sec. 6, Ch. 546, L. 1995; amd. Sec. 28, Ch. 349, L. 1997; amd. Sec. 1, Ch. 489, L. 1997.

Compiler's Comments

1997 Amendments: Chapter 349 in definition of agency, under entities excepted from the provisions of Title 2, chapter 4, inserted (a)(v) providing "the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C. 252 and 69-3-837". Amendment effective April 22, 1997.

Chapter 489 inserted definitions of interested person and significant interest to the public; and made minor changes in style.

Cross-References

Fish, wildlife, and park rules, 87-1-202, 87-1-303.

2-4-103. Rules and statements to be made available to public. (1) Each agency shall:

(a) make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions;

(b) upon request of any person, provide a copy of any rule.

(2) Unless otherwise provided by statute, an agency may require the payment of the cost of providing such copies.

(3) No agency rule is valid or effective against any person or party whose rights have been substantially prejudiced by an agency's failure to comply with the public inspection requirement herein.

History: En. Sec. 3, Ch. 2, Ex. L. 1971; amd. Sec. 1, Ch. 240, L. 1974; amd. Sec. 3, Ch. 285, L. 1977; R.C.M. 1947, 82-4203(1)(c), (1)(d), (2); amd. Sec. 3, Ch. 243, L. 1979.

Cross-References

Right of public to examine documents of public bodies, Art. II, sec. 9, Mont. Const.; 2-3-103.

Advance notice of proposed rules — mailing to requesting parties, 2-4-302.

2-4-104. Subpoenas and enforcement — compelling testimony. (1) An agency conducting any proceeding subject to this chapter shall have the power to require the furnishing of such information, the attendance of such witnesses, and the production of such books, records, papers, documents, and other objects as may be necessary and proper for the purposes of the proceeding. In furtherance of this power, an agency upon its own motion may and, upon request of any party appearing in a contested case, shall issue subpoenas for witnesses or subpoenas duces tecum. The method for service of subpoenas, witness fees, and mileage shall be the same as required in civil actions in the district courts of the state. Except as otherwise provided by statute, witness fees and mileage shall be paid by the party at whose request the subpoena was issued.

(2) In case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which he may be interrogated in a proceeding before the agency, the agency may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. If the agency fails or refuses to seek enforcement of a subpoena issued at the request of a party or to compel the giving of testimony considered material by a party, the party may make such application. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of such order shall be punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district courts. If another method of subpoena enforcement or compelling testimony is provided by statute, it may be used as an alternative to the method provided for in this section.

History: En. Sec. 20, Ch. 2, Ex. L. 1971; amd. Sec. 19, Ch. 285, L. 1977; R.C.M. 1947, 82-4220(1), (2).

Cross-References

Mileage, 2-18-503.

Contempt of court, Title 3, ch. 1, part 5; Rule 45(f), M.R.Civ.P. (see Title 25, ch. 20).

Subpoenas for witnesses, Rule 45(a), M.R.Civ.P. (see Title 25, ch. 20).

Subpoenas duces tecum, Rule 45(b), M.R.Civ.P. (see Title 25, ch. 20).

Service of subpoenas, Rule 45(c), M.R.Civ.P. (see Title 25, ch. 20).

Subpoenas, Title 26, ch. 2, part 1.

Witness fees, Title 26, ch. 2, part 5.

2-4-105. Representation by counsel. Any person compelled to appear in person or who voluntarily appears before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel. In a proceeding before an agency, every party shall be accorded the right to appear in person or by or with counsel but this chapter shall not be construed as requiring an agency to furnish counsel to any such person.

History: En. Sec. 21, Ch. 2, Ex. L. 1971; amd. Sec. 20, Ch. 285, L. 1977; R.C.M. 1947, 82-4221.

2-4-106. Service. Except where a statute expressly provides to the contrary, service in all agency proceedings subject to the provisions of this chapter and in proceedings for judicial review thereof shall be as prescribed for civil actions in the district courts.

History: En. Sec. 22, Ch. 2, Ex. L. 1971; amd. Sec. 21, Ch. 285, L. 1977; R.C.M. 1947, 82-4222.

Cross-References

Service for initiating judicial review of contested cases, 2-4-702.

Service in District Courts, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

2-4-107. Construction and effect. Nothing in this chapter shall be considered to limit or repeal requirements imposed by statute or otherwise recognized law. No subsequent legislation shall be considered to supersede or modify any provision of this chapter, whether by implication or otherwise, except to the extent that such legislation shall do so expressly.

History: En. Sec. 23, Ch. 2, Ex. L. 1971; amd. Sec. 22, Ch. 285, L. 1977; R.C.M. 1947, 82-4223.

2-4-108 and 2-4-109 reserved.

2-4-110. Departmental review of rule notices. (1) The head of each department of the executive branch shall appoint an existing attorney, paralegal, or other qualified person from that department to review each departmental rule proposal notice, adoption notice, or other notice relating to administrative rulemaking. Notice of the name of the person appointed under this subsection and of any successor must be given to the secretary of state and the administrative code committee within 10 days of the appointment.

(2) The person appointed under subsection (1) shall review each notice by any division, bureau, or other unit of the department, including units attached to the department for administrative purposes only under 2-15-121, for compliance with this chapter before the notice is filed with the secretary of state. The reviewer shall pay particular attention to 2-4-302 and 2-4-305. The review must include but is not limited to consideration of:

(a) the adequacy of the rationale for the intended action and whether the intended action is reasonably necessary to effectuate the purpose of the code section or sections implemented;

(b) whether the proper statutory authority for the rule is cited;

(c) whether the citation of the code section or sections implemented is correct; and

(d) whether the intended action is contrary to the code section or sections implemented or to other law.

(3) The person appointed under subsection (1) shall sign each notice for which this section requires a review. The act of signing is an affirmation that the review required by this section has been performed to the best of the reviewer's ability. The secretary of state may not accept for filing a notice that does not have the signature required by this section.

History: En. Sec. 1, Ch. 8, L. 1987; amd. Sec. 1, Ch. 3, L. 1991.

Part 2

Organizational and Procedural Rules

Part Cross-References

Montana Negotiated Rulemaking Act, Title 2, ch. 5, part 1.

2-4-201. Rules describing agency organization and procedures. In addition to other rulemaking requirements imposed by law, each agency shall:

(1) adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests. The notice and hearing requirements contained in 2-4-302 do not apply to adoption of a rule relating to a description of its organization.

(2) adopt rules of practice, not inconsistent with statutory provisions, setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency.

History: En. Sec. 3, Ch. 2, Ex. L. 1971; amd. Sec. 1, Ch. 240, L. 1974; amd. Sec. 3, Ch. 285, L. 1977; R.C.M. 1947, 82-4203(1)(a), (1)(b).

Cross-References

Public participation in governmental decisionmaking, Art. II, sec. 8, Mont. Const.; 2-3-103.

2-4-202. Model rules. (1) The attorney general shall prepare a model form for a rule describing the organization of agencies and model rules of practice for agencies to use as a guide in fulfilling the requirements of 2-4-201. The attorney general shall add to, amend, or revise the model rules from time to time as he considers necessary for the proper guidance of agencies.

(2) The model rules and additions, amendments, or revisions thereto shall be appropriate for the use of as many agencies as is practicable and shall be filed with the secretary of state and provided to any agency upon request. The adoption by an agency of all or part of the model rules does not relieve the agency from following the rulemaking procedures required by this chapter.

History: En. Sec. 3, Ch. 2, Ex. L. 1971; amd. Sec. 1, Ch. 240, L. 1974; amd. Sec. 3, Ch. 285, L. 1977; R.C.M. 1947, 82-4203(3).

Part 3

Adoption and Publication of Rules

Part Cross-References

Montana Negotiated Rulemaking Act, Title 2, ch. 5, part 1.

2-4-301. Authority to adopt not conferred. Except as provided in part 2, nothing in this chapter confers authority upon or augments the authority of any state agency to adopt, administer, or enforce any rule.

History: En. 82-4204.1 by Sec. 9, Ch. 285, L. 1977; R.C.M. 1947, 82-4204.1(part).

Cross-References

Rule defined, 2-4-102.

2-4-302. Notice, hearing, and submission of views. (1) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its intended action. The notice must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the rationale for the intended action, and the time when, place where, and manner in which interested persons may present their views on the intended action. The rationale must be written in plain, easily understood language.

(2) (a) The notice must be filed with the secretary of state for publication in the register, as provided in 2-4-312, and mailed within 3 days of publication to the sponsor of the legislative bill that enacted the section that is cited as implemented in the notice if the notice is the initial proposal to implement the section, to interested persons who have made timely requests to the agency to be informed of its rulemaking proceedings, and to the office of any professional, trade, or industrial society or organization or member of those entities who has filed a request with the administrative code committee when the request has been forwarded to the agency as provided in subsection (2)(b). Each agency shall create and maintain a list of interested persons and the subject or subjects n which each person on the list is interested. A person who submits a written comment or attends a hearing in regard to proposed agency action under this

part must be informed of the list by the agency. An agency complies with this subsection if it includes in the notice an advisement explaining how persons may be placed on the list of interested persons and if it complies with subsection (7).

(b) The administrative code committee shall forward a list of all organizations or persons who have submitted a request to be informed of agency actions to all agencies publishing rulemaking notices in the register. The list must be amended by the agency upon request of any person requesting to be added to or deleted from the list.

(c) The notice required by subsections (1) and (2)(a) must be published and mailed at least 30 days in advance of the agency's intended action. In addition to publishing and mailing the notice under subsection (2)(a) of this section, the agency shall post the notice on the state electronic bulletin board or other electronic communications system available to the public.

(d) The agency shall also, at the time that its personnel begin to work on the substantive content and the wording of the initial rule proposal to implement one or more statutes, notify the sponsor of the legislative bill that enacted the section.

(3) If a statute provides for a method of publication different from that provided in subsection (2), the affected agency shall comply with the statute in addition to the requirements contained in this section. However, the notice period may not be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data, views, or arguments, orally or in writing. If an amended or supplemental notice is filed, additional time may be allowed for oral or written submissions. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing must be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the administrative code committee, or by an association having not less than 25 members who will be directly affected. If the proposed rulemaking involves matters of significant interest to the public, the agency shall schedule an oral hearing.

(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing in this section alters that requirement.

(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a new proposal for purposes of compliance with this chapter.

(7) At the commencement of a hearing on the intended action, the person designated by the agency to preside at the hearing shall:

(a) read aloud the "Notice of Function of Administrative Code Committee" appearing in the register; and

(b) inform the persons at the hearing of the provisions of subsection (2)(a) and provide them an opportunity to place their names on the list.

(8) For purposes of notifying sponsors under subsections (2)(a) and (2)(d) who are no longer members of the legislature, a former legislator who wishes to receive notice may keep the former legislator's name, address, and telephone number on file with the secretary of state. An agency proposing rules shall consult the register when providing sponsor notice.

History: En. Sec. 4, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 410, L. 1975; amd. Sec. 1, Ch. 482, L. 1975; amd. Sec. 8, Ch. 285, L. 1977; R.C.M. 1947, 82-4204(part); amd. Sec. 4, Ch. 243, L. 1979; amd. Sec. 1, Ch. 381, L. 1981; amd. Sec. 1, Ch. 429, L. 1983; amd. Sec. 1, Ch. 152, L. 1997; amd. Sec. 1, Ch. 340, L. 1997; amd. Sec. 2, Ch. 489, L. 1997.

Compiler's Comments

1997 Amendments — Composite Section: Chapter 152 in (2)(b) substituted "register" for "Montana Administrative Register"; in (4), near middle of first sentence before "28 days", inserted "at least" and before second "notice" inserted "the original" and inserted second sentence regarding amended or supplemental notice; and made minor changes in style.

Chapter 340 in (2)(a), near beginning after "publication to", inserted "the sponsor of the legislative bill that enacted the section that is cited as implemented in the notice if the notice is the initial proposal to implement the section, to"; in (2)(c), near beginning, inserted "required by subsections (1) and (2)(a)"; inserted (2)(d) requiring an agency to notify the sponsor of a bill that enacts a section of law at the time the agency's personnel begin to work on the rule proposal intended to implement that section; inserted (8) regarding notice by an agency of a rule proposal to a sponsor of a bill enacting a section of law when the sponsor is no longer a member of the Legislature; and made minor changes in style.

Chapter 489 inserted third sentence in (1) requiring rationale to be written in easily understood language; inserted second, third, and fourth sentences in (2)(a) requiring agency to create and maintain interested persons list and to inform persons of existence of list; inserted second sentence in (2)(c) requiring agency to post notice on state bulletin board or electronic system available to public; inserted fourth sentence in (4) requiring agency to schedule oral hearing if proposed rule involves significant public interest; inserted (7)(b) requiring person presiding at hearing to inform persons of interested persons list and provide opportunity for inclusion on list; and made minor changes in style.

Style changes were slightly different in the chapters. In each case, the codifier chose the most appropriate.

Cross-References

Definition of substantive rules, 2-4-102.

Payment of costs — agency may require, 2-4-103.

Administrative Code Committee — call for hearing, 2-4-402.

Estimate of economic impact — published prior to hearing or adoption, 2-4-405.

Adoption, amendment, or repeal of rule — legislative authority, 2-4-412.

2-4-303. Emergency or temporary rules. (1) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days' notice and states in writing its reasons for that finding, it may proceed upon special notice filed with the committee, without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period not longer than 120 days, after which a new emergency rule with the same or substantially the same text may not be adopted, but the adoption of an identical rule under 2-4-302 is not precluded. Because the exercise of emergency rulemaking power precludes the people's constitutional right to prior notice and participation in the operations of their government, it constitutes the exercise of extraordinary power requiring extraordinary safeguards against abuse. An emergency rule may be adopted only in circumstances that truly and clearly constitute an existing imminent peril to the public health, safety, or welfare that cannot be averted or remedied by any other administrative act. The sufficiency of the reasons for a finding of imminent peril to the public health, safety, or welfare is subject to judicial review upon petition by any person. The matter must be set for hearing at the earliest possible time and takes precedence over all other matters except older matters of the same character. The sufficiency of the reasons justifying a finding of imminent peril and the necessity for emergency rulemaking must be compelling and, as written in the rule adoption notice, must stand on their own merits for purposes of judicial review. The dissemination of emergency rules required by 2-4-306 must be strictly observed and liberally accomplished.

(2) A statute enacted or amended to be effective prior to October 1 of the year of enactment or amendment may be implemented by a temporary administrative rule, adopted before October 1 of that year, upon any abbreviated notice or hearing that the agency finds practicable, but the rule may not be filed with the secretary of state until at least 30 days have passed since publication of the notice of proposal to adopt the rule. The temporary rule is effective until October 1 of the year of adoption. The adoption of an identical rule under 2-4-302 is not precluded during the period that the temporary rule is effective.

History: **En. Sec. 4, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 410, L. 1975; amd. Sec. 1, Ch. 482, L. 1975; amd. Sec. 8, Ch. 285, L. 1977; R.C.M. 1947, 82-4204(2); amd. Sec. 5, Ch. 243, L. 1979; amd. Sec. 1, Ch. 261, L. 1987; amd. Sec. 1, Ch. 5, L. 1991; amd. Sec. 3, Ch. 489, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 489 in first sentence in (1), after "proceed", inserted "upon special notice filed with the committee", inserted third and fourth sentences clarifying and limiting adoption of emergency rule, at end of fifth sentence, after "review", inserted "upon petition of any person", inserted sixth sentence requiring matter involving sufficiency for adoption of emergency rule to take precedence over other matters, inserted seventh sentence requiring sufficiency of reasons justifying necessity for emergency rule to be compelling and to stand alone for judicial review, and inserted eighth sentence requiring dissemination of emergency rules to be strictly observed and liberally accomplished; and made minor changes in style.

Cross-References

Exception to public participation — emergency situation, 2-3-112.

Emergency rules effective upon filing with Secretary of State, 2-4-306.

Immediate judicial review, 2-4-701.

2-4-304. Informal conferences and committees. (1) An agency may use informal conferences and consultations as a means of obtaining the viewpoints and advice of interested persons with respect to contemplated rulemaking.

(2) An agency may also appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rulemaking. The powers of the committees shall be advisory only.

(3) Nothing herein shall relieve the agency from following rulemaking procedures required by this chapter.

History: **En. Sec. 4, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 410, L. 1975; amd. Sec. 1, Ch. 482, L. 1975; amd. Sec. 8, Ch. 285, L. 1977; R.C.M. 1947, 82-4204(4).**

2-4-305. Requisites for validity — authority and statement of reasons. (1) The agency shall fully consider written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement the reasons for overruling the considerations urged against its adoption. If substantial differences exist between the rule as proposed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is printed in the register, the differences must be described in the statement of reasons for and against agency action. When written or oral submissions have not been received, an agency may omit the statement of reasons.

(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference must clearly indicate the portion of the language that is statutory and the portion that is an amplification of the language.

(3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted rule must include a citation to the specific section or sections in the Montana Code Annotated that the rule purports to implement. A substantive rule may not be proposed or adopted unless:

(a) a statute granting the agency authority to adopt rules clearly and specifically lists the subject matter of the rule as a subject upon which the agency shall or may adopt rules; or

(b) the rule implements and relates to a subject matter or an agency function that is clearly and specifically included in a statute to which the grant of rulemaking authority extends.

(4) Each rule that is proposed and adopted by an agency and that implements a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a policy and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by this chapter.

(5) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, an adoption, amendment, or repeal of a rule is not valid or effective unless it is:

(a) consistent and not in conflict with the statute; and

(b) reasonably necessary to effectuate the purpose of the statute. A statute mandating that the agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable necessity for a rule. The agency shall also address the reasonableness component of the reasonable necessity requirement by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal reasons and the rationale for its intended action and for the particular approach that it takes in complying with the mandate to adopt rules. Subject to the provisions of subsection (8), reasonable necessity must be clearly and thoroughly demonstrated for each adoption, amendment, or repeal of a rule in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency.

(7) A rule is not valid unless notice of it is given and it is adopted in substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section and

unless notice of adoption of the rule is published within 6 months of the publishing of notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases.

(8) An agency may use an amended proposal notice or the adoption notice to correct deficiencies in citations of authority for rules and in citations of sections implemented by rules. An agency may use an amended proposal notice but, except for clerical corrections, may not use the adoption notice to correct deficiencies in a statement of reasonable necessity.

(9) If a majority of the members of the administrative code committee notify the committee presiding officer that those members object to a notice of proposed rulemaking, the committee shall notify the agency in writing that the committee objects to the proposal notice and will address the objections at the next committee meeting. Following notice by the committee to the agency, the proposal notice may not be adopted until publication of the last issue of the register that is published before expiration of the 6-month period during which the adoption notice must be published, unless prior to that time, the committee meets and does not make the same objection. A copy of the committee's notification to the agency must be included in the committee's records.

History: Ap.p. Sec. 4, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 410, L. 1975; amd. Sec. 1, Ch. 482, L. 1975; amd. Sec. 8, Ch. 285, L. 1977; Sec. 82-4204, R.C.M. 1947; Ap.p. 82-4204.1 by Sec. 9, Ch. 285, L. 1977; Sec. 82-4204.1, R.C.M. 1947; R.C.M. 1947, 82-4204(part), 82-4204.1(part); amd. Sec. 6, Ch. 243, L. 1979; amd. Sec. 2, Ch. 381, L. 1981; amd. Sec. 1, Ch. 78, L. 1983; amd. Sec. 1, Ch. 466, L. 1983; amd. Sec. 1, Ch. 420, L. 1989; amd. Sec. 1, Ch. 3, L. 1995; amd. Sec. 2, Ch. 152, L. 1997; amd. Sec. 1, Ch. 335, L. 1997; amd. Sec. 4, Ch. 489, L. 1997.

Compiler's Comments

1997 Amendments: Chapter 152 in (1), in third sentence, substituted "register" for "Montana Administrative Register"; in (3) inserted last phrase and inserted (3)(a) and (3)(b) regarding conditions for proposal and adoption of substantive rule; in (6), after "statute", inserted "an adoption, amendment, or repeal of" and after "a rule" deleted "adopted"; and in (6)(b) inserted second and third sentences regarding reasonable necessity and in fourth sentence substituted "clearly and thoroughly demonstrated for each adoption, amendment, or repeal of a rule" for "demonstrated".

Chapter 335 inserted (9) providing that the Committee shall notify an agency if a majority of the members object to a notice of proposed rulemaking and that the objections will be addressed at the next Committee meeting, prohibiting adoption of the proposal notice for a 6-month period under certain conditions, and requiring the Committee to include a copy of the notice to the agency in the Committee records; and made minor changes in style.

Chapter 489 near beginning in (7), after "unless", inserted "notice of it is given" and after "2-4-303" inserted "or 2-4-306"; in first sentence in (8), before "citations", deleted "statements of reasonable necessity" and inserted second sentence prohibiting agency from using adoption notice to correct deficiency in statement of reasonable necessity; and made minor changes in style.

Applicability: Section 3, Ch. 335, L. 1997, provided: "[This act] applies to rules objected to under [this act] after [the effective date of this act]." Effective October 1, 1997.

Cross-References

Publication, 2-4-302.

Review of rulemaking record by Administrative Code Committee, 2-4-402.

2-4-306. Filing, format, and effective date — dissemination of emergency rules. (1) Each agency shall file with the secretary of state a copy of each rule adopted by it.

(2) The secretary of state may prescribe a format, style, and arrangement for notices and rules that are filed pursuant to this chapter and may refuse to accept the filing of any notice or rule that is not in compliance with this chapter.

The secretary of state shall keep and maintain a permanent register of all notices and rules filed, including superseded and repealed rules, that must be open to public inspection and shall provide copies of any notice or rule upon request of any person. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing copies.

(3) In the event that the administrative code committee has conducted a poll of the legislature in accordance with 2-4-403 or the revenue oversight committee has conducted a poll in accordance with 5-18-109, the results of the poll must be published with the rule.

(4) Each rule is effective after publication in the register, as provided in 2-4-312, except that:

(a) if a later date is required by statute or specified in the rule, the later date is the effective date;

(b) subject to applicable constitutional or statutory provisions:

(i) a temporary rule is effective immediately upon filing with the secretary of state or at a stated date following publication in the register; and

(ii) an emergency rule is effective at a stated date following publication in the register or immediately upon filing with the secretary of state if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons for the finding must be filed with the rule. The agency shall, in addition to the required publication in the register, take appropriate and extraordinary measures to make emergency rules known to each person who may be affected by them.

(c) if, following written administrative code committee notification to an agency under 2-4-305(9), the committee meets and under 2-4-406(1) objects to all or some portion of a proposed rule before the rule is adopted, the rule or portion of the rule objected to is not effective until the day after final adjournment of the regular session of the legislature that begins after the notice proposing the rule was published by the secretary of state, unless, following the committee's objection under 2-4-406(1):

(i) the committee withdraws its objection under 2-4-406 before the rule is adopted; or

(ii) the rule or portion of a rule objected to is adopted with changes that in the opinion of a majority of the committee members, as communicated in writing to the committee presiding officer and staff, make it comply with the committee's objection and concerns.

History: En. Sec. 5, Ch. 2, Ex. L. 1971; amd. Sec. 10, Ch. 285, L. 1977; amd. Sec. 2, Ch. 561, L. 1977; R.C.M. 1947, 82-4205(part); amd. Sec. 7, Ch. 243, L. 1979; amd. Sec. 12, Ch. 268, L. 1979; amd. Sec. 2, Ch. 261, L. 1987; amd. Sec. 2, Ch. 335, L. 1997; amd. Sec. 5, Ch. 489, L. 1997.

Compiler's Comments

1997 Amendments — Composite Section: Chapter 335 inserted (4)(c) providing that a rule is effective after publication in the register unless, after notice to the agency, the Administrative Code Committee meets and objects to a proposed rule before it is adopted and prohibiting an objected to rule from taking effect until after the adjournment of the legislative session following the notice proposal unless the Committee withdraws its objection or the objected rule is adopted with changes approved by the Committee; and made minor changes in style.

Chapter 489 in third sentence in (4)(b)(ii), after "shall", inserted "in addition to the required publication in the register" and after "appropriate" inserted "and extraordinary"; and made minor changes in style.

Style changes were slightly different in the chapters. In each case, the codifier chose the more appropriate.

Applicability: Section 3, Ch. 335, L. 1997, provided: "[This act] applies to rules objected to under [this act] after [the effective date of this act]." Effective October 1, 1997.

Cross-References

Emergency or temporary rules, 2-4-303.

Publication of economic impact estimate of rule, 2-4-405.

2-4-307. Omissions from ARM or register. (1) An agency may adopt by reference any model code, federal agency rule, rule of any agency of this state or other similar publication if the publication of the model code, rule, or other publication would be unduly cumbersome, expensive, or otherwise inexpedient.

(2) The model code, rule, or other publication must be adopted by reference in a rule adopted under the rulemaking procedure required by this chapter. The rule must contain a citation to the material adopted by reference and a statement of the general subject matter of the omitted rule and must state where a copy of the omitted material may be obtained. Upon request of the secretary of state, a copy of the omitted material must be filed with the secretary of state.

(3) No rule originally adopting by reference any model code or rule provided for in subsection (1) of this section may adopt any later amendments or editions of the material adopted. Except as provided in subsection (5), each later amendment or edition may be adopted by reference only by following the rulemaking procedure required by this chapter.

(4) If requested by a three-fourths vote of the administrative code committee, an agency must immediately publish the full or partial text of any pertinent material adopted by reference under this section. The committee may not require the publication of copyrighted material. Publication of the text of a rule previously adopted does not affect the date of adoption of the rule, but publication of the text of a rule before publication of the notice of final adoption must be in the form of and is considered to be a new notice of proposed rulemaking.

(5) Whenever later amendments of federal regulations must be adopted to comply with federal law or to qualify for federal funding, only a notice of incorporation by reference of such later amendments shall be filed in the Montana Administrative Register. This notice shall contain the information required by subsection (2) of this section and shall state the effective date of such incorporation. The effective date may be no sooner than 30 days after the date upon which the notice is published unless the 30 days causes a delay that jeopardizes compliance with federal law or qualification for federal funding in which event the effective date may be no sooner than the date of publication. A hearing is not required unless requested under 2-4-315 by either 10% or 25, whichever is less, of the persons who will be directly affected by the incorporation, by a governmental subdivision or agency, or by an association having not less than 25 members who will be directly affected. No further notice of adoption or preparation of a replacement page for the Administrative Rules of Montana is required.

(6) If a hearing is requested under subsection (5), the petition for hearing shall contain a request for an amendment and may contain suggested language, reasons for an amendment, and any other information pertinent to the subject of the rule.

History: En. Sec. 6, Ch. 2, Ex. L. 1971; amd. Sec. 11, Ch. 285, L. 1977; R.C.M. 1947, 82-4206(3); amd. Sec. 8, Ch. 243, L. 1979; amd. Sec. 1, Ch. 591, L. 1981.

2-4-308. Adjective or interpretive rule — statement of implied authority and legal effect. (1) Each adjective or interpretive rule or portion of such a rule to be adopted after October 1, 1983, under implied rulemaking authority shall contain a statement in the historical notations of the rule that the rule is advisory only but may be a correct interpretation of the law. Such statement must be placed in the ARM when the rule in question is next scheduled for reprinting.

(2) The administrative code committee may file with the secretary of state, for publication with any rule or portion thereof it considers to be adjective or interpretive, a statement indicating that it is the opinion of the administrative code committee that the rule or portion thereof is adjective or interpretive and therefore advisory only. If the committee requests the statement to be published for an adopted rule not scheduled for reprinting in the ARM, the cost of publishing the statement in the ARM shall be borne by the committee.

History: En. Sec. 1, Ch. 637, L. 1983.

2-4-309 and 2-4-310 reserved.

2-4-311. Publication and arrangement of ARM. (1) The secretary of state shall compile, index, arrange, rearrange, correct errors or inconsistencies without changing the meaning, intent, or effect of any rule, and publish all rules filed pursuant to this chapter in ARM. The secretary of state shall supplement, revise, and publish ARM or any part thereof as often as he considers necessary. He may include such editorial notes, cross-references, and other matter as he and the administrative code committee consider desirable or advantageous. He shall publish supplements to ARM at such times and in such form as he considers appropriate.

(2) ARM shall be arranged, indexed, and printed or duplicated in such manner as to permit separate publication of portions thereof relating to individual agencies. An agency may make arrangements with the secretary of state for the printing of as many copies of such separate publications as it may require. The cost of any such separate publications, determined in accordance with 2-4-313(4), shall be paid by the agency.

History: En. Sec. 6, Ch. 2, Ex. L. 1971; amd. Sec. 11, Ch. 285, L. 1977; R.C.M. 1947, 82-4206(part); amd. Sec. 9, Ch. 243, L. 1979.

2-4-312. Publication and arrangement of register. (1) The secretary of state shall publish in the register all notices, rules, and interpretations filed with him at least once a month or as directed by the administrative code committee but not more often than twice a month.

(2) He shall send the register without charge to each person listed in 2-4-313(1) and to each member of the legislature requesting the same. He shall send the register to any other person who pays a subscription fee which he shall fix in accordance with 2-4-313(4).

(3) The register must contain three sections, a rules section, a notice section, and an interpretation section:

(a) The rules section of the register must contain all rules filed since the compilation and publication of the preceding issue of the register, together with the concise statement of reasons required under 2-4-305(1).

(b) The notice section of the register must contain all rulemaking notices filed with the secretary of state pursuant to 2-4-302 since the compilation and publication of the preceding register.

(c) The interpretation section of the register must contain all opinions of the attorney general and all declaratory rulings of agencies issued since the publication of the preceding register.

(4) Each issue of the register must contain the issue number and date of the register and a table of contents. Each page of the register must contain the issue number and date of the register of which it is a part. The secretary of state may include with the register information to help the user in relating the register to ARM.

History: En. Sec. 6, Ch. 2, Ex. L. 1971; amd. Sec. 11, Ch. 285, L. 1977; R.C.M. 1947, 82-4206(2), (9); amd. Sec. 10, Ch. 243, L. 1979; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 1, Ch. 580, L. 1987.

Cross-References

Declaratory rulings, 2-4-501.

2-4-313. Distribution, costs, and maintenance. (1) The secretary of state shall distribute copies of ARM and supplements or revisions to ARM to the following:

(a) attorney general, one copy;

(b) clerk of United States district court for the district of Montana, one copy;

(c) clerk of United States court of appeals for the ninth circuit, one copy;

(d) county commissioners or governing body of each county of this state, for use of county officials and the public, at least one but not more than two copies, which may be maintained in a public library in the county seat or in the county offices as the county commissioners or governing body of the county may determine;

(e) state law library, one copy;

(f) state historical society, one copy;

(g) each unit of the Montana university system, one copy;

(h) law library of the university of Montana-Missoula, one copy;

(i) legislative services division, two copies;

(j) library of congress, one copy;

(k) state library, one copy.

(2) The secretary of state, each county in the state, and the librarians for the state law library and the university of Montana-Missoula law library shall maintain a complete, current set of ARM, including supplements or revisions to ARM. The designated persons shall also maintain the register issues published during the preceding 2 years. The secretary of state shall maintain a permanent set of the registers.

(3) The secretary of state shall make copies of and subscriptions to ARM and supplements or revisions to ARM and the register available to any person at prices fixed in accordance with subsection (4).

(4) The secretary of state, in consultation with the administrative code committee, shall determine the cost of supplying copies of ARM and supplements or revisions to ARM and the register to persons not listed in subsection (1). The cost must be the approximate cost of publication of the copies, including indexing, printing or duplicating, and mailing. However, a

uniform price per page or group of pages may be established without regard to differences in cost of printing different parts of ARM and supplements or revisions to ARM and the register. Fees are not refundable.

(5) The secretary of state shall deposit all fees in a proprietary fund.

(6) The secretary of state may charge agencies a filing fee for all material to be published in ARM or the register. The secretary of state shall fix, in consultation with the administrative code committee, the fee to cover the costs of supplying copies of ARM and supplements or revisions to ARM and the register to the persons listed in subsection (1). The cost must be the approximate cost of publication of the copies, including indexing, printing or duplicating, and mailing. However, a uniform price per page or group of pages may be established without regard to differences in cost of printing different parts of ARM and supplements or revisions to ARM and the register.

History: En. Sec. 6, Ch. 2, Ex. L. 1971; amd. Sec. 11, Ch. 285, L. 1977; R.C.M. 1947, 82-4206(5) thru (8), (10), (11); amd. Sec. 11, Ch. 243, L. 1979; amd. Sec. 1, Ch. 163, L. 1983; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 1, Ch. 397, L. 1985; amd. Sec. 2, Ch. 580, L. 1987; amd. Sec. 1, Ch. 6, Sp. L. January 1992; amd. Sec. 1, Ch. 411, L. 1993; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 5, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (1)(i) substituted reference to Legislative Services Division for reference to Legislative Council. Amendment effective March 12, 1997.

2-4-314. Biennial review by agencies — recommendations by committee. (1) Each agency shall at least biennially review its rules to determine if any new rule should be adopted or any existing rule should be modified or repealed.

(2) The committee may recommend to the legislature those modifications, additions, or deletions of agency rulemaking authority which the committee considers necessary.

History: En. Sec. 4, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 410, L. 1975; amd. Sec. 1, Ch. 482, L. 1975; amd. Sec. 8, Ch. 285, L. 1977; R.C.M. 1947, 82-4204(6); amd. Sec. 4, Ch. 600, L. 1979; amd. Sec. 3, Ch. 381, L. 1981; amd. Sec. 1, Ch. 63, L. 1983.

2-4-315. Petition for adoption, amendment, or repeal of rules. An interested person or, when the legislature is not in session, a member of the legislature on behalf of an interested person may petition an agency requesting the promulgation, amendment, or repeal of a rule. Each agency shall determine and prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 60 days after submission of a petition, the agency either shall deny the petition in writing or shall initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305. A decision to deny a petition or to initiate rulemaking proceedings must be in writing and based on record evidence. The written decision must include the reasons for the decision. Record evidence must include any evidence submitted by the petitioner on behalf of the petition and by the agency and interested persons in response to the petition. An agency may, but is not required to, conduct a hearing or oral presentation on the petition in order to develop a record and record evidence and to allow the petitioner and interested persons to present their views.

History: En. Sec. 7, Ch. 2, Ex. L. 1971; amd. Sec. 2, Ch. 236, L. 1974; amd. Sec. 12, Ch. 285, L. 1977; R.C.M. 1947, 82-4207; amd. Sec. 1, Ch. 110, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 110 near beginning of second sentence, after "shall", inserted "determine and", in third sentence, after "writing", deleted "(stating its reasons for the denial)", and inserted fourth, fifth, sixth, and seventh sentences concerning written decision and permissive hearing.

Cross-References

Adoption or amendment of rule — legislative authority, 2-4-412.

2-4-316 through 2-4-320 reserved.

2-4-321. Repealed. Sec. 63, Ch. 16, L. 1991.
History: En. Sec. 1, Ch. 600, L. 1979.

2-4-322. Repealed. Sec. 63, Ch. 16, L. 1991.
History: En. Sec. 2, Ch. 600, L. 1979.

2-4-323. Repealed. Sec. 63, Ch. 16, L. 1991.
History: En. Sec. 3, Ch. 600, L. 1979.

Part 4

Legislative Review of Rules

2-4-401. Administrative code committee — staff, meetings, and compensation. (1) The legislative services division shall provide staff assistance to the administrative code committee. The committee may advise the publisher in relation to the text and legal authority of the material published in the register or ARM, within the limitations of legislative appropriations.

(2) The committee shall meet as often as may be necessary during and between legislative sessions.

(3) Committee members are entitled to receive compensation and expenses as provided in 5-2-302.

History: (1)En. 82-4203.4 by Sec. 3, Ch. 410, L. 1975; amd. Sec. 6, Ch. 285, L. 1977; Sec. 82-4203.4, R.C.M. 1947; (2), (3)En. 82-4203.3 by Sec. 2, Ch. 410, L. 1975; amd. Sec. 9, Ch. 103, L. 1977; Sec. 82-4203.3, R.C.M. 1947; R.C.M. 1947, 82-4203.3, 82-4203.4; amd. Sec. 1, Ch. 302, L. 1993; amd. Sec. 7, Ch. 545, L. 1995.

Cross-References

Administrative Code Committee — composition, terms, and officers, Title 5, ch. 14, part 1.

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

2-4-402. Powers of the committee — duty to review rules — exception for revenue rules. (1) Except for rules proposed by the department of revenue, the administrative code committee shall review all proposed rules filed with the secretary of state.

(2) The revenue oversight committee shall review all rules proposed by the department of revenue.

(3) The administrative code committee may:

(a) request and obtain an agency's rulemaking records for the purpose of reviewing compliance with 2-4-305;

(b) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit those recommendations to the department proposing the rule and submit oral or written testimony at a rulemaking hearing;

(c) require that a rulemaking hearing be held in accordance with the provisions of 2-4-302 through 2-4-305;

(d) institute, intervene in, or otherwise participate in proceedings involving this chapter in the state and federal courts and administrative agencies;

(e) review the incidence and conduct of administrative proceedings under this chapter.

History: En. 82-4203.5 by Sec. 4, Ch. 410, L. 1975; amd. Sec. 7, Ch. 285, L. 1977; amd. Sec. 1, Ch. 561, L. 1977; R.C.M. 1947, 82-4203.5(1)(a) thru (1)(c); amd. Sec. 12, Ch. 243, L. 1979; amd. Sec. 11, Ch. 268, L. 1979; amd. Sec. 4, Ch. 381, L. 1981; amd. Sec. 2, Ch. 78, L. 1983; amd. Sec. 1, Ch. 572, L. 1989.

Cross-References

Necessity to be demonstrated in rulemaking record, 2-4-305(6).

2-4-403. Legislative intent — poll. (1) If the legislature is not in session, the committee may poll all members of the legislature by mail to determine whether a proposed rule is consistent with the intent of the legislature.

(2) Should 20 or more legislators object to any rule, the committee shall poll the members of the legislature.

(3) The poll shall include an opportunity for the agency to present a written justification for the rule to the members of the legislature.

History: En. 82-4203.5 by Sec. 4, Ch. 410, L. 1975; amd. Sec. 7, Ch. 285, L. 1977; amd. Sec. 1, Ch. 561, L. 1977; R.C.M. 1947, 82-4203.5(1)(d), (1)(e).

Cross-References

Publication of poll results, 2-4-306.

2-4-404. Evidentiary value of legislative poll. In the event that the administrative code committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll shall be admissible in any court proceeding involving the validity of the rule. In the event that the poll determines that a majority of the members of both houses find the proposed rule is contrary to the intent of the legislature, the rule shall be conclusively presumed to be contrary to the legislative intent in any court proceeding involving its validity.

History: En. Sec. 2, Ch. 561, L. 1977; R.C.M. 1947, 82-4205(3).

Cross-References

Poll results to be published with rule, 2-4-306.

2-4-405. Economic impact statement. (1) Upon written request of the administrative code committee based upon the affirmative request of at least five members of the committee at an open meeting, an agency shall prepare a statement of the economic impact of the adoption, amendment, or repeal of a rule as proposed. As an alternative, the administrative code committee may, by contract, prepare such an estimate. Except to the extent that the request expressly waives any one or more of the following, the requested statement must include and the statement prepared by the committee may include:

(a) a description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

(b) a description of the probable economic impact of the proposed rule upon affected classes of persons and quantifying, to the extent practicable, that impact;

(c) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;

(d) an analysis comparing the costs and benefits of the proposed rule to the costs and benefits of inaction;

(e) an analysis that determines whether there are less costly or less intrusive methods for achieving the purpose of the proposed rule;

(f) an analysis of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;

(g) a determination as to whether the proposed rule represents an efficient allocation of public and private resources; and

(h) a quantification or description of the data upon which subsections (1)(a) through (1)(g) are based and an explanation of how the data was gathered.

(2) A request to an agency for a statement or a decision to contract for the preparation of a statement must be made by the committee prior to the final agency action on the rule. The statement must be filed with the administrative code committee within 3 months of the committee's request or decision. The committee may withdraw its request or decision for an economic impact statement at any time.

(3) Upon receipt of an impact statement, the committee shall determine the sufficiency of the statement. If the committee determines that the statement is insufficient, the committee may return it to the agency or other person who prepared the statement and request that corrections or amendments be made. If the committee determines that the statement is sufficient, a notice indicating where a copy of the statement may be obtained must be filed with the secretary of state for publication in the register by the agency preparing the statement or by the committee, if the statement is prepared under contract by the committee, and must be mailed to persons who have registered advance notice of the agency's rulemaking proceedings.

(4) This section does not apply to rulemaking pursuant to 2-4-303.

(5) The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a result of the inaccuracy or inadequacy of a statement required under this section.

(6) An environmental impact statement prepared pursuant to 75-1-201 that includes an analysis of the factors listed in this section satisfies the provisions of this section.

History: En. Sec. 1, Ch. 480, L. 1979; amd. Sec. 1, Ch. 665, L. 1983; (6)En. Sec. 2, Ch. 665, L. 1983.

Cross-References

Notice and hearing on rules, 2-4-302.

Publication, 2-4-306.

2-4-406. Committee objection to violation of authority for rule — effect. (1) If the administrative code committee objects to all or some portion of a proposed or adopted rule because the committee considers it not to have been proposed or adopted in substantial compliance with 2-4-302, 2-4-303, and 2-4-305, the committee shall send a written objection to the agency which promulgated the rule. The objection must contain a concise statement of the committee's reasons for its action.

(2) Within 14 days after the mailing of a committee objection to a rule, the agency promulgating the rule shall respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection.

(3) If the committee fails to withdraw or substantially modify its objection to a rule, it may vote to send the objection to the secretary of state, who shall, upon receipt thereof, publish the objection in the Montana Administrative Register adjacent to any notice of adoption of the rule and in the ARM adjacent to the rule, provided an agency response must also be published if requested by the agency. Costs of publication of the objection and the agency response shall be borne by the committee.

(4) If an objection to all or a portion of a rule has been published pursuant to subsection (3), the agency bears the burden, in any action challenging the legality of the rule or portion of a rule objected to by the committee, of proving that the rule or portion of the rule objected to was adopted in substantial compliance with 2-4-302, 2-4-303, and 2-4-305. If a rule is invalidated by court judgment because the agency failed to meet its burden of proof imposed by this subsection and the court finds that the rule was adopted in arbitrary and capricious disregard for the purposes of the authorizing statute, the court may award costs and reasonable attorney fees against the agency.

History: En. Sec. 1, Ch. 589, L. 1983.

2-4-407 through 2-4-409 reserved.

2-4-410. Report of litigation. Each agency shall report to the administrative code committee any judicial proceedings in which the construction or interpretation of any provision of this chapter is in issue and may report to the committee any proceeding in which the construction or interpretation of any rule of the agency is in issue. Upon request of the committee, copies of documents filed in any proceeding in which the construction or interpretation of either this chapter or an agency rule is in issue must be made available to the committee by the agency involved.

History: En. Sec. 6, Ch. 381, L. 1981.

2-4-411. Report. The committee may recommend amendments to the Montana Administrative Procedure Act or the repeal, amendment, or adoption of a rule as provided in 2-4-412 and make other recommendations and reports as it considers advisable.

History: En. 82-4203.5 by Sec. 4, Ch. 410, L. 1975; amd. Sec. 7, Ch. 285, L. 1977; amd. Sec. 1, Ch. 561, L. 1977; R.C.M. 1947, 82-4203.5(2); amd. Sec. 3, Ch. 112, L. 1991; amd. Sec. 3, Ch. 349, L. 1993.

2-4-412. Legislative review of rules — effect of failure to object. (1) The legislature may, by bill, repeal any rule in ARM. If a rule is repealed, the legislature shall in the bill state its objections to the repealed rule. If an agency adopts a new rule to replace the repealed rule, the agency shall adopt the new rule in accordance with the objections stated by the legislature in the bill. If the legislature does not repeal a rule filed with it before the adjournment of that regular session, the rule remains valid.

(2) The legislature may also by joint resolution request or advise or by bill direct the adoption, amendment, or repeal of any rule. If a change in any rule or the adoption of an additional rule is advised, requested, or directed to be made, the legislature shall in the joint resolution or bill state the nature of the change or the additional rule to be made and its reasons therefor. The agency shall, in the manner provided in the Montana Administrative Procedure Act, adopt a new rule in accordance with the legislative direction in a bill.

(3) Rules and changes in rules made by agencies under subsection (2) of this section shall conform and be pursuant to statutory authority.

(4) Failure of the legislature or the administrative code committee to object in any manner to the adoption, amendment, or repeal of a rule is inadmissible in the courts of this state to prove the validity of any rule.

History: En. 82-4203.1 by Sec. 1, Ch. 239, L. 1973; amd. Sec. 1, Ch. 236, L. 1974; amd. Sec. 4, Ch. 285, L. 1977; R.C.M. 1947, 82-4203.1; amd. Sec. 5, Ch. 381, L. 1981; amd. Sec. 1, Ch. 164, L. 1983.

Cross-References

Declaratory rulings to be published, 2-3-113.

Petition for adoption, amendment, or repeal of rules, 2-4-315.

Part 5

Judicial Notice and Declaratory Rulings

2-4-501. Declaratory rulings by agencies. Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency. A copy of a declaratory ruling must be filed with the secretary of state for publication in the register. A declaratory ruling or the refusal to issue such a ruling shall be subject to judicial review in the same manner as decisions or orders in contested cases.

History: En. Sec. 18, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4218; amd. Sec. 13, Ch. 243, L. 1979.

Cross-References

Judicial review of contested cases, 2-4-702 through 2-4-704.

2-4-502 through 2-4-504 reserved.

2-4-505. Judicial notice of rules. The courts shall take judicial notice of any rule filed and published under the provisions of this chapter.

History: En. Sec. 8, Ch. 2, Ex. L. 1971; amd. Sec. 13, Ch. 285, L. 1977; R.C.M. 1947, 82-4208.

Cross-References

Judicial notice, Rule 202, M.R.Ev. (see Title 26, ch. 10).

2-4-506. Declaratory judgments on validity or application of rules. (1) A rule may be declared invalid or inapplicable in an action for declaratory judgment if it is found that the rule or its threatened application interferes with or impairs or threatens to interfere with or impair the legal rights or privileges of the plaintiff.

(2) A rule may also be declared invalid in such an action on the grounds that the rule was adopted with an arbitrary or capricious disregard for the

purpose of the authorizing statute as evidenced by documented legislative intent.

(3) A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question.

(4) The action may be brought in the district court for the county in which the plaintiff resides or has his principal place of business or in which the agency maintains its principal office. The agency shall be made a party to the action.

History: **En. Sec. 19, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 560, L. 1977; R.C.M. 1947, 82-4219; amd. Sec. 14, Ch. 243, L. 1979; amd. Sec. 2, Ch. 589, L. 1983.**

Cross-References

Administrative Code Committee — power to review rules, 2-4-402.

Poll of Legislature — presumption of intent, 2-4-404.

Uniform Declaratory Judgments Act, Title 27, ch. 8.

Part 6

Contested Cases

2-4-601. Notice. (1) In a contested case, all parties must be afforded an opportunity for hearing after reasonable notice.

(2) The notice must include:

(a) a statement of the time, place, and nature of the hearing;

(b) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(c) a reference to the particular sections of the statutes and rules involved;

(d) a short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement must be furnished.

(e) a statement that a formal proceeding may be waived pursuant to 2-4-603.

History: **En. Sec. 9, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4209(1), (2); amd. Sec. 1, Ch. 277, L. 1979.**

2-4-602. Discovery. Each agency shall provide in its rules of practice for discovery prior to a contested case hearing.

History: **En. Sec. 19, Ch. 285, L. 1977; R.C.M. 1947, 82-4220(3).**

2-4-603. Informal disposition and hearings — waiver of administrative proceedings. (1) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(2) Except as otherwise provided, parties to a contested case may jointly waive in writing a formal proceeding under this part. The parties may then utilize informal proceedings under 2-4-604. Parties to contested case proceedings held under Title 37 or under any other provision relating to licensure to pursue a profession or occupation may not waive formal proceedings.

(3) If a contested case does not involve a disputed issue of material fact, parties may jointly stipulate in writing to waive contested case proceedings and

may directly petition the district court for judicial review pursuant to 2-4-702. The petition shall contain an agreed statement of facts and a statement of the legal issues or contentions of the parties upon which the court, together with the additions it may consider necessary to fully present the issues, may make its decision.

History: En. Sec. 9, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4209(4); amd. Sec. 2, Ch. 277, L. 1979.

2-4-604. Informal proceedings. (1) In proceedings under this section, the agency shall, in accordance with procedures adopted under 2-4-201:

(a) give affected persons or parties or their counsel an opportunity, at a convenient time and place, to present to the agency or hearing examiner:

(i) written or oral evidence in opposition to the agency's action or refusal to act;

(ii) a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction; or

(iii) other written or oral evidence relating to the contested case;

(b) if the objections of the persons or parties are overruled, provide a written explanation within 7 days.

(2) The record must consist of:

(a) the notice and summary of grounds of the opposition;

(b) evidence offered or considered;

(c) any objections and rulings thereon;

(d) all matters placed on the record after ex parte communication pursuant to 2-4-613;

(e) a recording of any hearing held, together with a statement of the substance of the evidence received or considered, the written or oral statements of the parties or other persons, and the proceedings. A party may object in writing to the statement or may order at his cost a transcription of the recording, or both. Objections shall become a part of the record.

(3) Agencies shall give effect to the rules of privilege recognized by law.

(4) In agency proceedings under this section, irrelevant, immaterial, or unduly repetitious evidence must be excluded but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs is admissible, whether or not such evidence is admissible in a trial in the courts of Montana. Any part of the evidence may be received in written form, and all testimony of parties and witnesses must be made under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it is not sufficient in itself to support a finding unless it is admissible over objection in civil actions.

(5) A party may petition for review of an informal agency decision pursuant to part 7 of this chapter.

History: En. Sec. 3, Ch. 277, L. 1979.

Cross-References

Privileges, Title 26, ch. 1, part 8.

Rules of privileges, Rules 501 through 505, M.R.Ev. (see Title 26, ch. 10).

Oaths or affirmations of witnesses, Rule 603, M.R.Ev. (see Title 26, ch. 10).

Hearsay rules for District Court, Rules 801 through 806, M.R.Ev. (see Title 26, ch. 10).

2-4-605 through 2-4-610 reserved.

2-4-611. Hearing examiners — legal services unit — conduct of hearings — disqualification of hearing examiners and agency members. (1) An agency may appoint hearing examiners for the conduct of hearings in contested cases. A hearing examiner must be assigned with due regard to the expertise required for the particular matter.

(2) An agency may elect to request a hearing examiner from an agency legal assistance program, if any, within the attorney general's office or from another agency. If the request is honored, the time, date, and place of the hearing must be set by the agency, with the concurrence of the legal assistance program or the other agency.

(3) Agency members or hearing examiners presiding over hearings may administer oaths or affirmations; issue subpoenas pursuant to 2-4-104; provide for the taking of testimony by deposition; regulate the course of hearings, including setting the time and place for continued hearings and fixing the time for filing of briefs or other documents; and direct parties to appear and confer to consider simplification of the issues by consent of the parties.

(4) On the filing by a party, hearing examiner, or agency member in good faith of a timely and sufficient affidavit of personal bias, lack of independence, disqualification by law, or other disqualification of a hearing examiner or agency member, the agency shall determine the matter as a part of the record and decision in the case. The agency may disqualify the hearing examiner or agency member and request another hearing examiner pursuant to subsection (2) or assign another hearing examiner from within the agency. The affidavit must state the facts and the reasons for the belief that the hearing examiner should be disqualified and must be filed not less than 10 days before the original date set for the hearing.

History: En. Sec. 11, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4211(part); amd. Sec. 1, Ch. 467, L. 1979; amd. Sec. 2, Ch. 3, L. 1985.

Cross-References

Power to administer oaths, 2-16-116.

Depositions, Rules 27 through 32, M.R.Civ.P. (see Title 25, ch. 20).

Affidavits, Title 26, ch. 1, part 10.

Oaths of witnesses, Rule 603, M.R.Ev. (see Title 26, ch. 10).

2-4-612. Hearing — rules of evidence, cross-examination, judicial notice. (1) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

(2) Except as otherwise provided by statute relating directly to an agency, agencies shall be bound by common law and statutory rules of evidence. Objections to evidentiary offers may be made and shall be noted in the record. When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(3) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

(4) All testimony shall be given under oath or affirmation.

(5) A party shall have the right to conduct cross-examinations required for a full and true disclosure of facts, including the right to cross-examine the author of any document prepared by or on behalf of or for the use of the agency and offered in evidence.

(6) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed, including any staff memoranda or data. They shall be afforded an opportunity to contest the material so noticed.

(7) The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence.

History: En. Secs. 9, 10, 11, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4209(3), 82-4210, 82-4211(part).

Cross-References

Evidence, Title 26.

Judicial notice, Rules 201 and 202, M.R.Ev. (see Title 26, ch. 10).

Oaths of witnesses, Rule 603, M.R.Ev. (see Title 26, ch. 10).

Cross-examination, Rule 611, M.R.Ev. (see Title 26, ch. 10).

Opinions and expert testimony, Rules 701 through 705, M.R.Ev. (see Title 26, ch. 10).

Documentary evidence, Rules 1001 through 1008, M.R.Ev. (see Title 26, ch. 10).

2-4-613. Ex parte consultations. Unless required for disposition of ex parte matters authorized by law, the person or persons who are charged with the duty of rendering a decision or to make findings of fact and conclusions of law in a contested case, after issuance of notice of hearing, shall not communicate with any party or his representative in connection with any issue of fact or law in such case except upon notice and opportunity for all parties to participate.

History: En. Sec. 14, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4214.

Cross-References

Informal proceedings — record to include ex parte communications, 2-4-604.

2-4-614. Record — transcription. (1) The record in a contested case shall include:

(a) all pleadings, motions, intermediate rulings;

(b) all evidence received or considered, including a stenographic record of oral proceedings when demanded by a party;

(c) a statement of matters officially noticed;

(d) questions and offers of proof, objections, and rulings thereon;

(e) proposed findings and exceptions;

(f) any decision, opinion, or report by the hearing examiner or agency member presiding at the hearing;

(g) all staff memoranda or data submitted to the hearing examiner or members of the agency as evidence in connection with their consideration of the case.

(2) The stenographic record of oral proceedings or any part thereof shall be transcribed on request of any party. Unless otherwise provided by statute, the cost of the transcription shall be paid by the requesting party.

History: En. Sec. 9, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4209(5), (6).

2-4-615 through 2-4-620 reserved.

2-4-621. When absent members render decision — proposal for decision and opportunity to submit findings and conclusions — modification by agency. (1) When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case, the decision, if adverse to a party to the proceeding other than the agency itself, may not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision.

(2) The proposal for decision must contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing unless he becomes unavailable to the agency.

(3) The agency may adopt the proposal for decision as the agency's final order. The agency in its final order may reject or modify the conclusions of law and interpretation of administrative rules in the proposal for decision but may not reject or modify the findings of fact unless the agency first determines from a review of the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept or reduce the recommended penalty in a proposal for decision but may not increase it without a review of the complete record.

(4) A hearings officer who is a member of an agency adjudicative body may participate in the formulation of the agency's final order, provided he has completed all his duties as hearings officer.

History: En. Sec. 12, Ch. 2, Ex. L. 1971; amd. Sec. 14, Ch. 285, L. 1977; R.C.M. 1947, 82-4212(part); amd. Sec. 4, Ch. 277, L. 1979.

2-4-622. When hearings officer unavailable for decision. (1) If the person who conducted the hearing becomes unavailable to the agency, proposed findings of fact may be prepared by a person who has read the record only if the demeanor of witnesses is considered immaterial by all parties.

(2) The parties may waive compliance with 2-4-621 and this section by written stipulation.

History: En. Sec. 12, Ch. 2, Ex. L. 1971; amd. Sec. 14, Ch. 285, L. 1977; R.C.M. 1947, 82-4212(part); amd. Sec. 6, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (2), after "2-4-621 and", substituted "this section" for "2-4-622". Amendment effective March 12, 1997.

2-4-623. Final orders — notification — availability. (1) A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(2) Findings of facts shall be based exclusively on the evidence and on matters officially noticed.

(3) Each conclusion of law shall be supported by authority or by a reasoned opinion.

(4) If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding.

(5) Parties shall be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

(6) Each agency shall index and make available for public inspection all final decisions and orders, including declaratory rulings under 2-4-501. No such agency decision or order is valid or effective against any person or party nor may it be invoked by the agency for any purpose until it has been made available for public inspection as herein required. This provision is not applicable in favor of any person or party who has actual knowledge thereof or when a state statute or federal statute or regulation prohibits public disclosure of the contents of a decision or order.

History: (1), (3) thru (6)En. Sec. 13, Ch. 2, Ex. L. 1971; amd. Sec. 15, Ch. 285, L. 1977; Sec. 82-4213, R.C.M. 1947; (2)En. Sec. 9, Ch. 2, Ex. L. 1971; Sec. 82-4209, R.C.M. 1947; R.C.M. 1947, 82-4209(7), 82-4213.

2-4-624 through 2-4-630 reserved.

2-4-631. Licenses. (1) When the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license is required by law to be preceded by notice and opportunity for hearing, the provisions of this chapter concerning contested cases apply.

(2) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(3) Whenever notice is required, no revocation, suspension, annulment, withdrawal, or amendment of any license is lawful unless the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action. If the agency finds that public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

History: En. Sec. 15, Ch. 2, Ex. L. 1971; amd. Sec. 16, Ch. 285, L. 1977; R.C.M. 1947, 82-4215; amd. Sec. 1, Ch. 465, L. 1979.

Cross-References

Appeals — staying agency decision, 2-4-711.

Part 7

Judicial Review of Contested Cases

2-4-701. Immediate review of agency action. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

History: En. Sec. 16, Ch. 2, Ex. L. 1971; amd. Sec. 17, Ch. 285, L. 1977; R.C.M. 1947, 82-4216(part).

2-4-702. Initiating judicial review of contested cases. (1) (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute may not be precluded from questioning the validity of that statute on judicial review, but the party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Except as provided in subsection (2)(c), proceedings for review must be instituted by filing a petition in district court within 30 days after service of the final decision of the agency or, if a rehearing is requested, within 30 days after the decision is rendered. Except as otherwise provided by statute, the petition must be filed in the district court for the county where the petitioner resides or has the petitioner's principal place of business or where the agency maintains its principal office. Copies of the petition must be promptly served upon the agency and all parties of record.

(b) The petition must include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-4-704(2) upon which the petitioner contends he is entitled to relief. The petition must demand the relief to which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

(c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court, rather than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation court in the same manner as the provisions of this part apply to the district court.

(3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice only if the provisions of 27-19-315, 27-19-316, and 27-19-317 are met.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

History: En. Sec. 16, Ch. 2, Ex. L. 1971; amd. Sec. 17, Ch. 285, L. 1977; R.C.M. 1947, 82-4216(part); amd. Sec. 1, Ch. 520, L. 1985; amd. Sec. 1, Ch. 290, L. 1995.

Cross-References

Licenses — delay of expiration, 2-4-631.

District Court appellate jurisdiction, 3-5-303.

Venue, Title 25, ch. 2.

2-4-703. Receipt of additional evidence. If, before the date set for hearing, application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

History: En. Sec. 16, Ch. 2, Ex. L. 1971; amd. Sec. 17, Ch. 285, L. 1977; R.C.M. 1947, 82-4216(5).

2-4-704. Standards of review. (1) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency not shown in the record, proof thereof may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(2) The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because:

(a) the administrative findings, inferences, conclusions, or decisions are:

(i) in violation of constitutional or statutory provisions;

(ii) in excess of the statutory authority of the agency;

(iii) made upon unlawful procedure;

(iv) affected by other error of law;

(v) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

(vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(b) findings of fact, upon issues essential to the decision, were not made although requested.

History: En. Sec. 16, Ch. 2, Ex. L. 1971; amd. Sec. 17, Ch. 285, L. 1977; R.C.M. 1947, 82-4216(6), (7); amd. Sec. 2, Ch. 83, L. 1989.

2-4-705 through 2-4-710 reserved.

2-4-711. Appeals — staying agency decision. An aggrieved party may obtain review of a final judgment of a district court under this part by appeal to the supreme court within 60 days after entry of judgment. Such appeal shall be taken in the manner provided by law for appeals from district courts in civil cases. Unless otherwise provided by statute or unless the agency has granted a stay through the completion of the judicial review process:

(1) if appeal is taken from a judgment of the district court affirming an agency decision, the agency decision shall not be stayed except upon order of the supreme court; except that, in cases where a stay is in effect at the time of the filing of notice of appeal, the stay shall be continued by operation of law for 20 days from the date of filing of the notice;

(2) if appeal is taken from a judgment of the district court reversing or modifying an agency decision, the agency decision shall be stayed pending final determination of the appeal unless the supreme court orders otherwise.

History: En. Sec. 17, Ch. 2, Ex. L. 1971; amd. Sec. 18, Ch. 285, L. 1977; R.C.M. 1947, 82-4217.

Cross-References

Appeals from District Court, Rule 4, M.R.App.P. (see Title 25, ch. 21).

Stay of judgment or order pending appeal to Supreme Court, Rule 7, M.R.App.P. (see Title 25, ch. 21).

CHAPTER 5

MONTANA NEGOTIATED RULEMAKING ACT

Part 1 — General Provisions

2-5-101. Short title.
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2-5-105. Application for membership on committees — publication of notice.
2-5-106. Establishment of committee — determination.
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2-5-108. Committee — duties — procedures — report.
2-5-109. Facilitator — selection and duties.
2-5-110. Expenses — convener — facilitator — committee members.

Chapter Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Part 1

General Provisions

2-5-101. Short title. This part may be cited as the "Montana Negotiated Rulemaking Act".

History: En. Sec. 1, Ch. 400, L. 1993.

2-5-102. Purpose. The purpose of this part is to establish a framework for the conduct of negotiated rulemaking consistent with the Montana Administrative Procedure Act and the constitutional right of Montanans to participate in the operation of governmental agencies and to encourage agencies to use negotiated rulemaking when it enhances the rulemaking process. As authorized by 2-4-304, it is the intent of the legislature that state agencies, whenever appropriate, use the negotiated rulemaking process to resolve controversial issues prior to the commencement of the formal rulemaking process. However, negotiated rulemaking is not a substitute for the public notification and participation requirements of the Montana Administrative Procedure Act, and a consensus agreement by a negotiated rulemaking committee may be modified by an agency as a result of the subsequent rulemaking process. This part may not be construed as an attempt to limit innovation and experimentation with the negotiated rulemaking process.

History: En. Sec. 2, Ch. 400, L. 1993.

Cross-References

Informal conferences and committees, 2-4-304.

2-5-103. Definitions. As used in this part, the following definitions apply:

(1) "Agency" means any board, bureau, commission, department, authority, or officer of the executive branch of state government authorized or required by law to make rules.

(2) "Consensus" means unanimous concurrence among the interests represented on a negotiated rulemaking committee established under 2-5-106, unless the committee agrees upon another specified definition.

(3) "Convener" means a person who impartially assists an agency in determining whether establishment of a negotiated rulemaking committee is feasible and appropriate for a particular rulemaking procedure.

(4) "Facilitator" means a person who impartially aids in the discussions and negotiations among the members of a negotiated rulemaking committee to develop a proposed rule. A facilitator does not have decisionmaking authority.

(5) "Interest" means, with respect to an issue or matter, multiple parties that have a similar point of view or that are likely to be affected in a similar manner.

(6) "Negotiated rulemaking" means rulemaking through the use of a negotiated rulemaking committee.

(7) "Negotiated rulemaking committee" or "committee" means an advisory committee established under 2-5-106 and authorized under 2-4-304 to consider and discuss issues for the purpose of reaching a consensus in the development of a proposed rule.

(8) "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public or private organization of any character.

(9) "Rule" means an agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(c) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

(d) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(e) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the Administrative Rules of Montana.

History: En. Sec. 3, Ch. 400, L. 1993.

Cross-References

Informal conferences and committees, 2-4-304.

Declaratory rulings by agencies, 2-4-501.

2-5-104. Determination of need for negotiated rulemaking committee. (1) An agency may establish a negotiated rulemaking committee to negotiate and develop a proposed rule if the agency director determines that the use of the negotiated rulemaking procedure is in the public interest. In making that determination, the agency director shall consider whether:

(a) there is a need for a rule;

(b) there are a limited number of identifiable interests that will be significantly affected by the rule;

(c) there is a reasonable likelihood that a committee can be convened with a balanced representation of persons who:

(i) can adequately represent the interests identified under subsection (1)(b); and

(ii) are willing to negotiate in good faith to reach a consensus on the proposed rule;

(d) there is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time;

(e) the negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of the final rule;

(f) the agency has adequate resources and is willing to commit those resources, including technical assistance, to the committee; and

(g) the agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee as the basis for the rule proposed by the agency.

(2) An agency may use the services of a convener to assist in making the determination of need pursuant to subsection (1) and to assist the agency in:

(a) identifying persons who will be significantly affected by a proposed rule; and

(b) conducting discussions with affected persons on the issues of concern and ascertaining whether the establishment of a negotiated rulemaking committee is feasible and appropriate for the particular rulemaking procedure.

(3) The convener shall report findings and make recommendations to the agency. Upon request of the agency, the convener shall ascertain the names of persons who are willing and qualified to represent the interests that will be significantly affected by the proposed rule. The report and any recommendations of the convener must be made available to the public upon request.

History: En. Sec. 4, Ch. 400, L. 1993.

2-5-105. Application for membership on committees — publication of notice. (1) If an agency decides to establish a negotiated rulemaking committee, the agency shall publish in the Montana Administrative Register and, as appropriate, in newspapers and other publications, a notice that includes:

(a) an announcement that the agency intends to establish a negotiated rulemaking committee to negotiate and develop a proposed rule;

(b) a description of the subject and scope of the rule to be developed and the issues to be considered;

(c) a list of interests likely to be significantly affected by the proposed rule;

(d) a list of the persons proposed to represent the affected interests and the agency;

(e) a proposed schedule for completing the work of the committee; and

(f) an explanation of how a person may apply for or nominate another person for membership on the committee.

(2) An agency may include the notice required in subsection (1) in the notice of intent to promulgate rules made pursuant to 2-4-302.

(3) The agency shall provide a period of at least 30 days for the submission of comments and applications for membership on a negotiated rulemaking committee.

History: En. Sec. 5, Ch. 400, L. 1993.

Cross-References

Notice, hearing, and submission of views, 2-4-302.

2-5-106. Establishment of committee — determination. (1) If, after considering comments and applications submitted under 2-5-105, the agency determines that a negotiated rulemaking committee can adequately represent the interests of the persons that will be significantly affected by a proposed rule and that it is feasible and appropriate in the particular rulemaking, the agency may establish a negotiated rulemaking committee.

(2) If, after considering comments and applications submitted under 2-5-105, the agency decides not to establish a negotiated rulemaking committee, the agency shall notify the persons who commented on or applied for membership on the negotiated rulemaking committee of the reasons for the decision. The agency shall also publish a notice in the Montana Administrative Register and, as appropriate, in newspapers and other publications.

(3) The agency shall provide appropriate administrative support to the negotiated rulemaking committee, including technical support.

(4) A negotiated rulemaking committee terminates upon adoption of the final rule under consideration, unless the agency, after consulting the committee, or the committee itself specifies an earlier termination date.

History: En. Sec. 6, Ch. 400, L. 1993.

2-5-107. Expansion of committee membership. (1) A negotiated rulemaking committee may by consensus expand its membership, either by contacting and recruiting persons whose participation the committee believes is essential to the success of the negotiated rulemaking process or upon reviewing a petition submitted pursuant to subsection (2).

(2) Persons who will be significantly affected by a proposed rule and who believe that their interests will not be adequately represented by any person on a negotiated rulemaking committee may petition for or nominate another person for membership on the negotiated rulemaking committee. Each petition or nomination must be submitted to the negotiated rulemaking committee and must include:

(a) the name of the petitioner or nominee and a description of the interests the person represents;

(b) evidence that the petitioner or nominee is authorized to represent parties related to the interests the person proposes to represent;

(c) a written commitment that the petitioner or nominee will actively participate in good faith in the development of the rule under consideration and

(d) an explanation of reasons that the persons already on the negotiated rulemaking committee do not adequately represent the interests of the person submitting the petition or nomination.

(3) Upon receiving a petition pursuant to subsection (2), a negotiated rulemaking committee shall decide by consensus at its next meeting whether or not to expand its membership.

History: En. Sec. 7, Ch. 400, L. 1993.

2-5-108. Committee — duties — procedures — report. (1) A negotiated rulemaking committee shall consider the matter proposed by the agency for consideration and shall attempt to reach consensus concerning a proposed rule and any other matter the committee determines is relevant to the proposed rule.

(2) The person representing the agency on a negotiated rulemaking committee shall participate in the deliberations of the committee with the same rights and responsibilities of other members of the committee and is authorized to fully represent the agency in the discussions and negotiations of the committee.

(3) A negotiated rulemaking committee may adopt procedures or ground rules for the operation of the committee.

(4) If a negotiated rulemaking committee achieves consensus on a proposed rule, at the conclusion of the negotiations, the committee shall transmit to the agency that established the committee a report containing the proposed rule.

(5) If a negotiated rulemaking committee does not reach a consensus on the proposed rule, the committee shall transmit to the agency a report specifying areas in which the committee reached consensus and the issues that remain unresolved. The committee may include in the report any other information, recommendations, or materials that the committee considers appropriate. Any member of the committee may include as an addendum to the report additional information, recommendations, or materials.

(6) Title 2, chapter 3, part 2, applies to meetings of a negotiated rulemaking committee.

History: En. Sec. 8, Ch. 400, L. 1993.

2-5-109. Facilitator — selection and duties. (1) An agency may nominate a person to serve as a facilitator for the negotiations of the committee, subject to the approval of the committee by consensus. If the committee does not approve the agency's nomination for facilitator, the agency shall submit a substitute nomination. If a committee does not approve the substitute nomination of the agency for facilitator, the committee shall select by consensus a person to serve as facilitator. A person designated to represent the agency in substantive issues may not serve as facilitator or presiding officer for the committee.

(2) A facilitator approved or selected by a committee shall:

(a) preside at the meetings of the committee in an impartial manner;

(b) impartially assist the members of the committee in conducting discussions and negotiations and achieving consensus; and

(c) manage the keeping of minutes and records.

History: En. Sec. 9, Ch. 400, L. 1993.

2-5-110. Expenses — convener — facilitator — committee members. (1) An agency may employ or enter into a contract for the services of an organization or individual to serve as a convener or facilitator for a negotiated rulemaking committee or may use the services of a government employee to act as a convener or facilitator for a committee.

(2) An agency shall determine whether a person under consideration as a convener or facilitator of a negotiated rulemaking committee has any financial or other interest that would preclude the person from serving in an impartial and independent manner. A person disqualified under this criterion must be dropped from further consideration.

(3) Members of a negotiated rulemaking committee are responsible for their own expenses of participation. However, an agency may pay for a committee member's reasonable travel and per diem expenses, expenses to obtain technical assistance, and a reasonable rate of compensation if:

(a) the committee member certifies a lack of adequate financial resources to participate in the committee; and

(b) the agency determines that the committee member's participation in the committee is necessary to ensure an adequate representation of the interests of the members.

(4) An agency may accept grants or gifts from any source to fund the negotiated rulemaking process, provided that:

(a) information on the name of the person giving the grant or gift and the amount of the grant or gift is available to the public;

(b) the grant or gift is given to and accepted by the agency without placing any condition on the membership of a negotiated rulemaking committee or the outcome of the negotiated rulemaking process; and

(c) there is consensus among the members of the negotiated rulemaking committee established pursuant to 2-5-106 that the acceptance of the grant or gift will not diminish the integrity of the negotiated rulemaking process.

History: En. Sec. 10, Ch. 400, L. 1993.

CHAPTER 6

PUBLIC RECORDS

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2-6-305. Renumbered 2-6-107 by Code Commissioner, 1979.
2-6-306. Renumbered 2-6-108 by Code Commissioner, 1979.
2-6-307. Certified copies of official records.

Part 4 — Local Government Records

2-6-401. Definitions.
2-6-402. Local government records committee — creation.
2-6-403. Duties and responsibilities.
2-6-404. Rulemaking authority.

Part 1
Public Records Generally

2-6-101. Definitions. (1) Writings are of two kinds:

(a) public; and

(b) private.

(2) Public writings are:

(a) the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country;

(b) public records, kept in this state, of private writings, except as provided in 22-1-1103 and 22-3-807.

(3) Public writings are divided into four classes:

(a) laws;

(b) judicial records;

(c) other official documents;

(d) public records, kept in this state, of private writings.

(4) All other writings are private.

History: En. Secs. 3170, 3171, 3172, 3182, C. Civ. Proc. 1895; re-en. Secs. 7895, 7896, 7897, 7900, Rev. C. 1907; re-en. Secs. 10539, 10540, 10541, 10544, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 1887, 1888, 1889, 1894; re-en. Secs. 10539, 10540, 10541, 10544, R.C.M. 1935; R.C.M. 1947, 93-1001-1, 93-1001-2, 93-1001-3, 93-1001-6; amd. Sec. 4, Ch. 476, L. 1985; amd. Sec. 11, Ch. 748, L. 1991.

2-6-102. Citizens entitled to inspect and copy public writings. (1) Every citizen has a right to inspect and take a copy of any public writings of this state, except as provided in 22-1-1103 or 22-3-807 and as otherwise expressly provided by statute.

(2) Every public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him on demand a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing.

History: En. Secs. 3180, 3181, C. Civ. Proc. 1895; re-en. Secs. 7898, 7899, Rev. C. 1907; re-en. Secs. 10542, 10543, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 1892, 1893; re-en. Secs. 10542, 10543, R.C.M. 1935; R.C.M. 1947, 93-1001-4, 93-1001-5; amd. Sec. 5, Ch. 476, L. 1985; amd. Sec. 12, Ch. 748, L. 1991.

Cross-References

Right to examine documents, Art. II, sec. 9, Mont. Const.

Minutes of meetings — available subject to right of individual privacy, 2-3-212.

Records of officers open to public inspection, 2-6-104.

Settlement of claim against government — governmental portion open to public inspection, 2-9-303, 2-9-304.

Election materials not public until canvassed, 13-15-301.

Ownership of public obligations — no inspection, 17-5-1106.

Certification of documents, Rules 902 and 1005, M.R.Ev. (see Title 26, ch. 10).

Records of Medical Legal Panel confidential, 27-6-703.

Attachment — filing not public until writ returned, 27-18-111.

2-6-103. Filing and copying fees. (1) The secretary of state, for services performed in the office, shall charge and collect fees commensurate with costs for filing and copying services.

(2) A member of the legislature or state or county officer may not be charged for any search relative to matters appertaining to the duties of the member's office or for a certified copy of any law or resolution passed by the legislature relative to the member's official duties.

(3) The secretary of state may not charge a fee, other than the fees authorized in 2-6-110, for providing electronic information.

(4) Fees must be collected in advance and when collected by the secretary of state are not refundable and must be deposited into a proprietary fund.

History: En. Sec. 410, Pol. C. 1895; amd. Sec. 1, p. 47, L. 1899; amd. Sec. 1, Ch. 127, L. 1903; amd. Sec. 1, Ch. 74, L. 1905; re-en. Sec. 165, Rev. C. 1907; amd. Sec. 1, Ch. 91, L. 1921; re-en. Sec. 145, R.C.M. 1921; Cal. Pol. C. Sec. 416; amd. Sec. 1, Ch. 50, L. 1935; re-en. Sec. 145, R.C.M. 1935; amd. Sec. 1, Ch. 116, L. 1961; amd. Sec. 141, Ch. 300, L. 1967; amd. Sec. 3, Ch. 185, L. 1971; amd. Sec. 1, Ch. 137, L. 1974; R.C.M. 1947, 25-102; amd. Sec. 5, Ch. 184, L. 1979; amd. Sec. 18, Ch. 429, L. 1979; amd. Sec. 2, Ch. 254, L. 1991; amd. Sec. 2, Ch. 411, L. 1993; amd. Sec. 1, Ch. 406, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 406 in (1) substituted "commensurate with costs for filing and copying services" for language specifying dollar amount of fee for various services (see 1997 Session Law for former text); in (4), at end, substituted "into a proprietary fund" for "pursuant to 17-6-105"; deleted (5) that read: "(5) Within 120 days following the end of each fiscal year, the secretary of state shall deposit into the general fund from the proprietary fund any revenue collected in the proprietary fund during the prior fiscal year that is in excess of the amount appropriated from the proprietary fund for the current year"; and made minor changes in style. Amendment effective April 28, 1997.

2-6-104. Records of officers open to public inspection. Except as provided in 27-18-111 and 42-6-101, the public records and other matters in the office of any officer are at all times during office hours open to the inspection of any person.

History: **En. Sec. 1136, Pol. C. 1895; re-en. Sec. 438, Rev. C. 1907; re-en. Sec. 455, R.C.M. 1921; Cal. Pol. C. Sec. 1032; re-en. Sec. 455, R.C.M. 1935; amd. Sec. 1, Ch. 112, L. 1945; R.C.M. 1947, 59-512(part); amd. Sec. 157, Ch. 480, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 480 near beginning, after "provided in", substituted "27-18-111 and 42-6-101" for "40-8-126 and 27-18-111".

Applicability: Section 173, Ch. 480, L. 1997 provided: "(1) [Sections 1 through 156] [Title 42, chapters 1 through 8] apply to proceedings commenced on or after October 1, 1997.

(2) A petition for adoption filed prior to October 1, 1997, is governed by the law in effect at the time the petition was filed.

(3) The putative father registry requirements apply to children born on or after October 1, 1997."

Cross-References

Citizen's right to examine documents, Art. II, sec. 9, Mont. Const.

Citizens entitled to inspect and copy public writings, 2-6-102.

Office hours, 2-16-117.

Ownership of public obligations — no inspection, 17-5-1106.

2-6-105. Removal of public records. Any record, a transcript of which is admissible in evidence, must not be removed from the office where it is kept, except upon the order of a court or judge in cases where the inspection of the record is shown to be essential to the just determination of the cause or proceeding pending or where the court is held in the same building with such office.

History: **En. Sec. 3240, C. Civ. Proc. 1895; re-en. Sec. 7953, Rev. C. 1907; re-en. Sec. 10597, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1950; re-en. Sec. 10597, R.C.M. 1935; R.C.M. 1947, 93-1101-20(part).**

2-6-106. Possession of records. Every public officer is entitled to the possession of all books and papers pertaining to his office or in the custody of a former incumbent by virtue of his office.

History: **En. Sec. 1120, Pol. C. 1895; re-en. Sec. 427, Rev. C. 1907; re-en. Sec. 460, R.C.M. 1921; Cal. Pol. C. Sec. 1014; re-en. Sec. 460, R.C.M. 1935; R.C.M. 1947, 59-530; Sec. 2-6-303(1), MCA 1979; redes. 2-6-106 by Code Commissioner, 1979.**

Cross-References

Public records — property of state, 2-6-205.

2-6-107. Proceedings to compel delivery of records. If any person, whether a former incumbent or another person, refuses or neglects to deliver to the actual incumbent any such books or papers, such actual incumbent may apply, by complaint, to any district court or judge of the county where the person so refusing or neglecting resides and the court or judge must proceed in a summary way, after notice to the adverse party, to hear the allegations and proofs of the parties and to order any such books and papers to be delivered to the petitioners.

History: **En. Sec. 1121, Pol. C. 1895; re-en. Sec. 428, Rev. C. 1907; re-en. Sec. 461, R.C.M. 1921; Cal. Pol. C. Sec. 1015; re-en. Sec. 461, R.C.M. 1935; R.C.M. 1947, 59-531; Sec. 2-6-305, MCA 1979; redes. 2-6-107 by Code Commissioner, 1979.**

2-6-108. Attachment and warrant to enforce. The execution of the order and delivery of the books and papers may be enforced by attachment as for a witness and also, at the request of the plaintiff, by a warrant directed to the sheriff or a constable of the county, commanding him to search for such books and papers and to take and deliver them to the plaintiff.

History: **En. Sec. 1122, Pol. C. 1895; re-en. Sec. 429, Rev. C. 1907; re-en. Sec. 462, R.C.M. 1921; Cal. Pol. C. Sec. 1016; re-en. Sec. 462, R.C.M. 1935; R.C.M. 1947, 59-532; Sec. 2-6-306, MCA 1979; redes. 2-6-108 by Code Commissioner, 1979.**

2-6-109. Prohibition on distribution or sale of mailing lists — exceptions — penalty. (1) Except as provided in subsections (3) through (8), in order to protect the privacy of those who deal with state and local government:

(a) an agency may not distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and

(b) a list of persons prepared by the agency may not be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.

(2) As used in this section, "agency" means any board, bureau, commission, department, division, authority, or officer of the state or a local government.

(3) Except as provided in 30-9-403, this section does not prevent an individual from compiling a mailing list by examination of original documents or applications that are otherwise open to public inspection.

(4) This section does not apply to the lists of registered electors and the new voter lists provided for in 13-2-115 and 13-38-103, to lists of the names of employees governed by Title 39, chapter 31, or to lists of persons holding driver's licenses provided for under 61-5-126.

(5) This section does not prevent an agency from providing a list to persons providing prelicensing or continuing educational courses subject to state law or subject to Title 33, chapter 17.

(6) This section does not apply to the right of access either by Montana law enforcement agencies or, by purchase or otherwise, of public records dealing with motor vehicle registration.

(7) This section does not apply to a corporate information list developed by the secretary of state containing the name, address, registered agent, officers, and directors of business, nonprofit, religious, professional, and close corporations authorized to do business in this state.

(8) This section does not apply to the use by the public employees' retirement board of a mailing list of board-administered retirement system participants to send materials on behalf of a retiree organization formed for board-administered retirement system participants and with tax-exempt status under section 501(c)(4) of the Internal Revenue Code, as amended, for a fee determined by rules of the board, provided that the mailing list is not released to the organization.

(9) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor.

History: En. Sec. 1, Ch. 606, L. 1979; amd. Sec. 6, Ch. 683, L. 1985; amd. Sec. 1, Ch. 663, L. 1989; amd. Sec. 2, Ch. 289, L. 1991; amd. Sec. 1, Ch. 379, L. 1995; amd. Sec. 1, Ch. 412, L. 1995; amd. Sec. 1, Ch. 364, L. 1997; amd. Sec. 4, Ch. 370, L. 1997.

Compiler's Comments

1997 Amendments: Chapter 364 in (5), near middle, substituted "state law or" for "Title 20, chapter 30, or specifically exempted from that chapter as provided in 20-30-102, or".

Chapter 370 in (8), near middle after "on behalf of a", substituted "retiree organization formed for board-administered retirement system participants and" for "third party", after "section" substituted "501(c)(4)" for "501(c)(3)", and at end substituted "organization" for "third party". Amendment effective April 23, 1997.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Misdemeanor — no penalty specified, 46-18-212.

2-6-110. Electronic information — public access — fees. (1) Except as provided by law, each person is entitled to a copy of information compiled, created, or otherwise in the custody of public agencies that is in electronic format, subject to the same restrictions applicable to the information in printed form. All restrictions relating to confidentiality, privacy, business secrets, and copyright are applicable to the electronic information.

(2) Except as provided by law and subject to subsection (3), an agency may charge a fee, not to exceed:

(a) the agency's actual cost of purchasing the electronic media used for transferring data, if the person requesting the information does not provide the media;

(b) expenses incurred by the agency as a result of mainframe processing charges;

(c) expenses incurred by the agency for providing online computer access to the person requesting access;

(d) other out-of-pocket expenses directly associated with the request for information; and

(e) the hourly rate for the current fiscal year for a state employee classified as grade 10, market salary, under 2-18-312 for each hour, or fraction of an hour, after one-half hour of copying service has been provided.

(3) (a) In addition to the allowable fees in subsection (2), the department of revenue may charge an additional fee as reimbursement for the cost of developing and maintaining the property valuation and assessment system data base from which the information is requested. The fee must be charged to persons, federal agencies, state agencies, and other entities requesting the data base or any part of the data base from any department property valuation and assessment system. The fee may not be charged to the governor's office of budget and program planning, the state tax appeal board, or any legislative agency or committee.

(b) The department of revenue may not charge a fee for information provided from any department property valuation and assessment system data base to a local taxing jurisdiction for use in taxation and other governmental functions or to an individual taxpayer concerning the taxpayer's property.

(c) All fees received by the department of revenue under subsection (2) and this subsection (3) must be deposited in a state special revenue fund as provided in 15-1-521.

(4) For the purposes of this section, the term "agency" has the meaning provided in 2-3-102 but includes legislative, judicial, and state military agencies.

(5) This section does not authorize the release of electronic security codes giving access to private information.

History: En. Sec. 1, Ch. 254, L. 1991; amd. Sec. 10, Ch. 640, L. 1993; amd. Sec. 1, Ch. 27, Sp. L. November 1993; amd. Sec. 2, Ch. 4, L. 1995; amd. Sec. 1, Ch. 484, L. 1995.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

2-6-111. Custody and reproduction of records by secretary of state. (1) The secretary of state is charged with the custody of:

(a) the enrolled copy of the constitution;

(b) all the acts and resolutions passed by the legislature;

(c) the journals of the legislature;

(d) the great seal;

(e) all books, records, parchments, maps, and papers kept or deposited in his office pursuant to law.

(2) All records included in subsection (1) may be kept and reproduced in accordance with rules adopted by the secretary of state in consultation with the state records committee provided for in 2-15-1013.

(3) The state records committee created by 2-15-1013 may approve the disposal of original records once those records are reproduced as provided for in subsection (2), unless disposal takes the form of transfer of records; in that case, reproduction will not be necessary. The reproduction or certified copy of a record may be used in place of the original for all purposes, including as evidence in any court or proceeding, and has the same force and effect as the original record.

(4) The secretary of state shall prepare enlarged typed or photographic copies of the records whenever their production is required by law.

(5) At least two copies shall be made of all records reproduced as provided for in subsection (2). The secretary of state shall place one copy in a fireproof storage place and shall retain the other copy in his office with suitable equipment for displaying a record by projection to not less than its original size and for preparing, for persons entitled thereto, copies of the record.

(6) All duplicates of all records shall be identified and indexed.

History: En. Sec. 400, Pol. C. 1895; re-en. Sec. 153, Rev. C. 1907; re-en. Sec. 133, R.C.M. 1921; Cal. Pol. C. Sec. 407; re-en. Sec. 133, R.C.M. 1935; R.C.M. 1947, 82-2201; amd. Sec. 1, Ch. 152, L. 1979; amd. Sec. 8, Ch. 467, L. 1987; amd. Sec. 1, Ch. 185, L. 1989.

Cross-References

Citizens entitled to inspect and copy public writings, 2-6-102.

Certification and admission of public documents, Rules 902 and 1005, M.R.Ev. (see Title 26, ch. 10).

Part 2

Public Records Management

2-6-201. Purpose. The purpose of this part is to create an effective records management program for executive branch agencies of the state of Montana and political subdivisions by establishing guidelines and procedures for the efficient and economical control of the creation, utilization, maintenance, and preservation of state and local records.

History: En. 82-3333 by Sec. 2, Ch. 339, L. 1977; R.C.M. 1947, 82-3333; amd. Sec. 5, Ch. 420, L. 1993.

2-6-202. Definitions. As used in this part, the following definitions apply:

(1) "Public records" includes any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including all copies thereof, regardless of physical form or characteristics, that has been made or received by a state agency in connection with the transaction of official business and preserved for informational value or as evidence of a transaction and all other records or documents required by law to be filed with or kept by any agency of the state of Montana.

(2) "State records committee" or "committee" means the state records committee provided for in 2-15-1013.

History: (1)En. 82-3334 by Sec. 3, Ch. 339, L. 1977; Sec. 82-3334, R.C.M. 1947; (2)En. by Code Commissioner, 1979; R.C.M. 1947, 82-3334(1).

2-6-203. Secretary of state's powers and duties. (1) In order to insure the proper management and safeguarding of public records, the secretary of state shall undertake the following:

(a) establish guidelines for inventorying, cataloging, retaining, and transferring all public records of state agencies;

(b) review and analyze all state agency filing systems and procedures and approve filing system equipment requests;

(c) establish and operate the state records center, as authorized by appropriation, for the purpose of storing and servicing public records not retained in office space;

(d) gather and disseminate information on all phases of records management, including current practices, methods, procedures, and devices for the efficient and economical management of records;

(e) operate a central microfilm unit which will microfilm, on a cost recovery basis, all records approved for filming by the office of origin and the secretary of state; and

(f) approve microfilming projects and microfilm equipment purchases undertaken by all state agencies.

(2) Upon request, the secretary of state shall assist and advise in the establishment of records management procedures in the legislative and judicial branches of state government and shall, as required by them, provide services similar to those available to the executive branch.

History: (1)En. 82-3335 by Sec. 4, Ch. 339, L. 1977; Sec. 82-3335, R.C.M. 1947; (2)En. 82-3337 by Sec. 6, Ch. 339, L. 1977; Sec. 82-3337, R.C.M. 1947; R.C.M. 1947, 82-3335, 82-3337; amd. Sec. 1, Ch. 378, L. 1991.

2-6-204. State records committee approval. The committee shall approve, modify, or disapprove the recommendations on retention schedules of all public records to determine which documents not included in the provisions of this part are to be designated public records and approve agency requests to dispose of such public records.

History: En. 82-3338 by Sec. 7, Ch. 339, L. 1977; R.C.M. 1947, 82-3338(3).

2-6-205. Preservation of public records. All public records are and shall remain the property of the state. They shall be delivered by outgoing officials and employees to their successors and shall be preserved, stored, transferred, destroyed, or disposed of and otherwise managed only in accordance with the provisions of this part.

History: En. 82-3334 by Sec. 3, Ch. 339, L. 1977; R.C.M. 1947, 82-3334(2).

Cross-References

Proceedings to compel delivery of records, 2-6-107.

2-6-206. Protection of essential records. (1) In order to provide for the continuity and preservation of civil government, each elected and appointed officer of the executive branch shall designate certain public records as essential records needed for an emergency or for the reestablishment of normal operations after any such emergency. A list of such records shall be forwarded to the secretary of state. The list shall be reviewed from time to time by the elected or appointed officers to insure its accuracy. Any changes or revisions shall be forwarded to the secretary of state.

(2) Each elected and appointed officer of state government shall insure that the security of essential records is accomplished by the most economical means possible. Protection of essential records may be by vaulting, planned or natural dispersal of copies, storage in the state archives, or any other method approved by the secretary of state.

(3) Reproductions of essential records may be by photocopy, magnetic tape, microfilm, or other methods approved by the secretary of state.

History: En. 82-3341 by Sec. 10, Ch. 339, L. 1977; R.C.M. 1947, 82-3341; amd. Sec. 2, Ch. 378, L. 1991.

Cross-References

Custody and preservation of records by Secretary of State, 2-6-111.

Preservation of records — state archives, Title 22, ch. 3, part 2.

2-6-207. Certified copies of public records. (1) The Montana historical society shall reproduce and certify copies of public records in its possession upon application of any citizen of this state.

(2) The certified copy of a public record has the same force in law as if made by the original custodian.

History: En. Sec. 1, Ch. 102, L. 1979.

Cross-References

Certified copies of official records, 2-6-307.

Certification and evidentiary value of public records, Rules 902 and 1005, M.R.Ev. (see Title 26, ch. 10).

2-6-208 through 2-6-210 reserved.

2-6-211. Transfer of public records. (1) All public records not required in the current operation of the office where they are made or kept and all records of each agency, commission, committee, or any other activity of the executive branch of state government which may be abolished or discontinued shall be, in accordance with approved records retention schedules, either transferred to the state records center or transferred to the custody of the state archives if such records are considered to have permanent administrative or historical value.

(2) When records are transferred to the state records center, the agency so doing loses none of its rights of control and access. The state records center is only a custodian of the agency records, and access will only be by agency approval. Agency records for which the state records center acts as custodian may not be subpoenaed from the state records center but must be subpoenaed from the agency to which the records belong. Fees may be charged to cover the cost of records storage and servicing.

(3) If an agency does not wish to transfer records as provided in an approved retention schedule, the agency shall, within 30 days, notify the secretary of state and request a change in the schedule.

History: En. 82-3340 by Sec. 9, Ch. 339, L. 1977; R.C.M. 1947, 82-3340; amd. Sec. 3, Ch. 378, L. 1991; amd. Sec. 2, Ch. 6, Sp. L. January 1992.

2-6-212. Disposal of public records. (1) Except as provided in subsection (2), no public record may be disposed of or destroyed without the unanimous approval of the state records committee. When approval is required, a request for the disposal or destruction must be submitted to the state records committee by the agency concerned.

(2) The state records committee may by unanimous approval establish categories of records for which no disposal request is required, providing those records are retained for the designated retention period.

History: En. 82-3339 by Sec. 8, Ch. 339, L. 1977; R.C.M. 1947, 82-3339; amd. Sec. 1, Ch. 173, L. 1981.

2-6-213. Agency responsibilities and transfer schedules. Each executive branch agency of state government shall administer its records management function and shall:

(1) coordinate all aspects of the agency records management function;

(2) manage the inventorying of all public records within the agency for disposition, scheduling, and transfer action in accordance with procedures prescribed by the secretary of state and the state records committee;

(3) analyze records inventory data, examine and compare divisional or unit inventories for duplication of records, and recommend to the secretary of state and the state records committee minimal retentions for all copies of public records within the agency;

(4) approve all records disposal requests which are submitted by the agency to the state records committee; and

(5) review established records retention schedules to insure that they are complete and current.

History: En. 82-3336 by Sec. 5, Ch. 339, L. 1977; R.C.M. 1947, 82-3336; amd. Sec. 4, Ch. 378, L. 1991.

2-6-214. Department of administration — powers and duties. (1) In order to ensure compatibility with the computer and telecommunications systems of state government, the department of administration shall develop standards for technological compatibility for state agencies for records management equipment or systems used to electronically capture, store, or retrieve public records through computerized, optical, or other electronic methods.

(2) The department of administration shall approve all acquisitions of executive agency records management equipment or systems used to electronically capture, store, or retrieve public records through computerized, optical, or other electronic methods to ensure compatibility with the standards developed under subsection (1).

(3) The department of administration is responsible for the management and operation of equipment, systems, facilities, or processes integral to the department's central computer and telecommunications systems.

History: En. Sec. 8, Ch. 378, L. 1991.

Part 3

Records of Elected Executive Branch Officers

Part Cross-References

Right of department head to access to department's agencies and records before assuming position, 2-15-113.

2-6-301. Definitions. As used in this part the following definitions apply:

(1) "Constitutionally designated and elected officials of the executive branch of government" means the governor, lieutenant governor, attorney general, secretary of state, superintendent of public instruction, and auditor.

(2) "Official records" means any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including all copies thereof, regardless of physical form or characteristics, that has been made or received by a constitutionally designated and elected official of the executive branch of government in transacting his official duties and preserved for informational value or as evidence of a transaction.

History: En. 59-530.1 by Sec. 1, Ch. 441, L. 1977; R.C.M. 1947, 59-530.1.

2-6-302. Official records management — powers and duties. In order to insure the proper management and safeguarding of official records, the Montana historical society shall:

(1) establish and operate the state archives as authorized by appropriation for the purpose of storing and servicing official records transferred to the custody of the state archives;

(2) in cooperation with the secretary of state, the local government records committee provided for in 2-6-402, and the state records committee provided for in 2-15-1013, establish guidelines for the inventorying, cataloging, retention, and transfer of all official records;

(3) maintain and enforce restrictions on access to official records in the custody of the state archives in accordance with the provisions of this part;

(4) provide adequate housing and care of official records in the custody of the state archives to insure their proper preservation and use by the public;

(5) in accordance with the guidelines established pursuant to subsection (2), remove and destroy duplicate official records and official records of insignificant historical value from the records deposited in the state archives.

History: En. 59-530.3 by Sec. 3, Ch. 441, L. 1977; R.C.M. 1947, 59-530.3; amd. Sec. 6, Ch. 184, L. 1979; amd. Sec. 5, Ch. 378, L. 1991; amd. Sec. 6, Ch. 420, L. 1993.

Cross-References

Preservation of records — state archives, Title 22, ch. 3, part 2.

2-6-303. Ownership of records — transfer. (1) All official records shall remain the property of the state. They shall be delivered by outgoing officials to their successors and shall be preserved, stored, transferred, destroyed, or disposed of and otherwise managed only in accordance with the provisions of this part.

(2) A public officer may, with the concurrence of the Montana historical society, transfer to the state archives official records that he has been specifically directed by statute to preserve or keep in his office.

History: (1)En. 59-530.2 by Sec. 2, Ch. 441, L. 1977; Sec. 59-530.2, R.C.M. 1947; (2)En. Sec. 3, Ch. 102, L. 1979.

Cross-References

Records of Secretary of State, 2-6-111.

Ownership of public records, 2-6-205.

2-6-304. Outgoing officials — records management duties. (1) Within 2 years after the completion of the final term of office of a constitutionally designated and elected official of the executive branch of government, all of the official records not necessary to the current operation of that office shall be subject to storage, disposal, or transfer in accordance with the provisions of this part.

(2) All official records of a retiring constitutionally designated and elected official not necessary to the current operation of that office and considered worthy of preservation by the Montana historical society shall be transferred to the custody of the state archives within that 2-year period.

(3) An outgoing official, in consultation with staff members of the Montana historical society, shall review his official records and isolate any items of a purely personal nature. Such personal papers are not subject to this part, but they may be deposited with the official papers at the official's discretion.

(4) An outgoing official, in consultation with staff members of the Montana historical society, may restrict access to certain segments of his official records. No restrictions may be longer than the lifetime of the depositing official. Restricted access may be imposed only to protect the confidentiality of personal information contained in the records. Restricted access may not be imposed unless the demand of individual privacy clearly exceeds the merits of public disclosure.

(5) Any question concerning the transfer or other status of official records arising between the state archives and an elected official's office shall be decided by a four-fifths vote of the members of the state records committee.

History: En. 59-530.4 by Sec. 4, Ch. 441, L. 1977; R.C.M. 1947, 59-530.4; amd. Sec. 6, Ch. 378, L. 1991.

Cross-References

Right to examine public documents subject to demand for individual privacy, Art. II, sec. 9, Mont. Const.

2-6-305. Renumbered 2-6-107 by Code Commissioner, 1979.

2-6-306. Renumbered 2-6-108 by Code Commissioner, 1979.

2-6-307. Certified copies of official records. (1) The Montana historical society shall reproduce and certify copies of official records in its possession upon application of any citizen of this state.

(2) The certified copy of an official record has the same force in law as if made by the original custodian.

History: En. Sec. 2, Ch. 102, L. 1979.

Cross-References

Certified copies of official records, 2-6-207.

Certification and evidentiary value of public records, Rules 902 and 1005, M.R.Ev. (see Title 26, ch. 10).

Part 4
Local Government Records

2-6-401. Definitions. For the purposes of this part, the following definitions apply:

(1) "Local government" means:

(a) any city, town, county, consolidated city-county, or school district; and

(b) any subdivision of an entity named in subsection (1)(a).

(2) "Public records" includes any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including all copies of the record, regardless of physical form or characteristics, that has been made or received by any local government, in connection with the transaction of official business, and preserved for informational value or as evidence of a transaction and all other records or documents required by law to be filed with or kept by any local government in the state of Montana.

(3) "Records custodian" means any individual responsible for the proper filing, storage, or safekeeping of any public records.

History: En. Sec. 1, Ch. 420, L. 1993.

2-6-402. Local government records committee — creation. (1) There is a local government records committee.

(2) The committee consists of the following seven members:

(a) the state archivist;

(b) the state records manager;

(c) a representative of the department of commerce;

(d) two local records custodians, appointed by the director of the Montana historical society; and

(e) two additional local records custodians, appointed by the secretary of state.

(3) Committee members subject to appointment shall hold office for a period of 2 years beginning on January 1 of the year following their appointment.

(4) Any vacancies must be filled in the same manner that they were filled originally.

(5) The committee shall elect a presiding officer and a vice presiding officer.

(6) The committee shall meet twice a year upon the call of the secretary of state or the presiding officer.

(7) Members of the committee not serving as part of their compensated government employment must be compensated in accordance with 2-18-501 through 2-18-503 for each day in committee attendance. Members who serve as part of their compensated government employment may not receive additional compensation, but the employing governmental entity shall furnish, in accordance with the prevailing per diem rates, a reasonable allowance for travel and other expenses incurred in attending committee meetings.

History: En. Sec. 2, Ch. 420, L. 1993; amd. Sec. 1, Ch. 179, L. 1995.

2-6-403. Duties and responsibilities. (1) The local government records committee shall approve, modify, or disapprove proposals for local government records retention and disposition schedules.

(2) The local government records committee shall appoint a subcommittee, known as the local government records destruction subcommittee, to handle requests for disposal of records. The subcommittee consists of the state archivist and a representative of the department of commerce. Unless specifically authorized by statute or by the retention and disposition schedule, a local government public record may not be destroyed or otherwise disposed of without the unanimous approval of the subcommittee.

When approval is required, a request for the disposal or destruction of any local government records must be submitted to the subcommittee by the entity concerned. If there is not unanimous approval of the subcommittee, the issue of the disposition of a record must be referred to the local government records committee for approval. When approval is obtained from the subcommittee or from the local government records committee for the disposal of a record, the local government records committee shall consider the inclusion of a new category of record for which a disposal request is not required and shall update the schedule.

(3) The local government records committee shall establish a retention and disposition schedule for categories of records for which a disposal request is not required. The committee shall publish the retention and disposition schedules. Updates to those schedules, if any, must be published at least annually.

(4) The committee shall establish school records retention schedules by September 1, 1997.

(5) The committee shall respond to requests for technical advice on matters relating to local government records.

(6) The committee shall provide leadership and coordination in matters affecting the records of multiple local governments.

History: En. Sec. 3, Ch. 420, L. 1993; amd. Sec. 2, Ch. 179, L. 1995; amd. Sec. 1, Ch. 323, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 323 in (2), near beginning of first sentence before "committee", inserted "local government records", near beginning of third sentence inserted "or by the retention and disposition schedule", and at end inserted fifth and sixth sentences requiring the issue of disposition of a record to be referred to the records committee if there is not unanimous approval of the subcommittee and providing that when approval is obtained, the records committee shall consider the inclusion of a new category of record for which a disposal request is not required and shall update the schedule; in (3) substituted "shall establish a retention and disposition schedule for categories of records for which a disposal request is not required" for "may by unanimous approval establish categories of records for which a disposal request is not required, providing that those records are retained for the designated retention period" and at end inserted "The committee shall publish the retention and disposition schedules. Updates to those schedules, if any, must be published at least annually"; inserted (4) requiring the committee to establish school records retention schedules by September 1, 1997; and made minor changes in style.

2-6-404. Rulemaking authority. The secretary of state shall adopt rules to implement 2-6-402 and 2-6-403.

History: En. Sec. 4, Ch. 420, L. 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

CHAPTER 7

STUDIES, REPORTS, AND AUDITS

Part 1 — Studies and Reports

2-7-101. Repealed.
2-7-102. Repealed.
2-7-103. Review by governor of executive branch.
2-7-104. Revenue studies — report to governor and legislature.

2-7-105. Tax information submitted.

Parts 2 through 4 reserved

Part 5 — Audits of Political Subdivisions

2-7-501. Definitions.
2-7-502. Short title — purpose.
2-7-503. Financial reports and audits of local government entities — exception.
2-7-504. Accounting methods — exception.
2-7-505. Audit scope and standards.
2-7-506. Audit by independent auditor.
2-7-507. Duty of officers to aid in audit.
2-7-508. Power to examine books and papers.
2-7-509. Audits of school-related organizations — costs — criteria.
2-7-510 reserved.
2-7-511. Access to public accounts — suspension of officer in case of discrepancy.
2-7-512. Exit review conference.
2-7-513. Content of audit report and financial report — exception.
2-7-514. Filing of audit report and financial report.
2-7-515. Actions by governing bodies.
2-7-516. Audit fees.
2-7-517. Penalty.
2-7-518. Deposit of fees.
2-7-519 and 2-7-520 reserved.
2-7-521. Publication.
2-7-522. Report review.

Part 1
Studies and Reports

2-7-101. Repealed. Sec. 21, Ch. 3, L. 1985.

History: En. Sec. 1, Ch. 93, L. 1969; R.C.M. 1947, 82-4001.

2-7-102. Repealed. Sec. 14, Ch. 125, L. 1983.

History: En. Sec. 2, Ch. 93, L. 1969; amd. Sec. 1, Ch. 134, L. 1971; R.C.M. 1947, 82-4002; amd. Sec. 1, Ch. 335, L. 1979.

2-7-103. Review by governor of executive branch. The office of the governor shall continuously study and evaluate the organizational structure, management practices, and functions of the executive branch and of each agency. The governor shall, by executive order or other means within the authority granted to him, take action to improve the manageability of the executive branch.

History: En. 82-1315 by Sec. 1, Ch. 238, L. 1973; R.C.M. 1947, 82-1315; amd. Sec. 2, Ch. 125, L. 1983.

Cross-References

Executive state agencies, Title 2, ch. 15.

2-7-104. Revenue studies — report to governor and legislature. The director of revenue shall study fiscal problems and tax structures of state and local governments and submit the studies to the governor and, as requested, to the legislature, a legislative committee, or a member of the legislature.

History: En. 82A-1804 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 64, Ch. 391, L. 1973; R.C.M. 1947, 82A-1804(part); amd. Sec. 4, Ch. 112, L. 1991; amd. Sec. 4, Ch. 349, L. 1993.

Cross-References

Department of Revenue — Director, 2-15-1301.

2-7-105. Tax information submitted. It shall be the duty of all public officers of the state and of any municipality to give to the department of revenue information in their possession relating to taxation when required by the department and cooperate with and aid the department in every manner in its efforts to secure a fair, equitable, and just enforcement of the taxation and revenue laws of the state.

History: En. Sec. 15, Ch. 3, L. 1923; re-en. Sec. 2122.15, R.C.M. 1935; amd. Sec. 8, Ch. 516, L. 1973; R.C.M. 1947, 84-715.

Parts 2 through 4 reserved

Part 5

Audits of Political Subdivisions

2-7-501. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Audit" means a financial audit and includes financial statement and financial-related audits as defined by government auditing standards as established by the U.S. comptroller general.

(2) "Board" means the Montana board of public accountants provided for in 2-15-1866.

(3) "Department" means the department of commerce.

(4) (a) "Financial assistance" means assistance provided by a federal, state, or local government entity to a local government entity or subrecipient to carry out a program. Financial assistance may be in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, direct appropriations, or other noncash assistance. Financial assistance includes awards received directly from federal and state agencies or indirectly when subrecipients receive funds identified as federal or state funds by recipients. The granting agency is responsible for identifying the source of funds awarded to recipients. The recipient is responsible for identifying the source of funds awarded to subrecipients.

(b) Financial assistance does not include direct federal, state, or local government cash assistance to individuals.

(5) "Financial report" means a presentation of schedules that reflect a current financial position and the operating results for the 1-year reporting period.

(6) "Independent auditor" means:

(a) a federal, state, or local government auditor who meets the standards specified in the government auditing standards; or

(b) a licensed accountant who meets the standards in subsection (6)(a).

(7) (a) "Local government entity" means a county, city, district, or public corporation that:

(i) has the power to raise revenue for the purpose of serving the general public;

(ii) is governed by a board, commission, or individual elected or appointed by the public or representatives of the public; and

(iii) receives local, state, or federal financial assistance.

(b) Local government entities include but are not limited to:

(i) airport authority districts;
(ii) cemetery districts;
(iii) counties;
(iv) county housing authorities;
(v) county road improvement districts;
(vi) county sewer districts;
(vii) county water districts;
(viii) county weed control districts;
(ix) drainage districts;
(x) fire department relief associations;
(xi) fire districts;
(xii) hospital districts;
(xiii) incorporated cities or towns;
(xiv) irrigation districts;
(xv) mosquito districts;
(xvi) municipal housing authority districts;
(xvii) port authorities;
(xviii) refuse disposal districts;
(xix) rural improvement districts;
(xx) school districts including a district's extracurricular funds;
(xxi) soil conservation districts;
(xxii) special education or other cooperatives;
(xxiii) television districts;
(xxiv) urban transportation districts;
(xxv) volunteer fire departments; and
(xxvi) water conservancy districts.

(8) "Revenues" means all receipts of a local government entity from any source excluding the proceeds from bond issuances.

History: En. 82-4515 by Sec. 1, Ch. 380, L. 1975; R.C.M. 1947, 82-4515; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 1, Ch. 489, L. 1991.

2-7-502. Short title — purpose. (1) This part may be cited as the "State of Montana Single Audit Act".

(2) The purposes of this part are to:

(a) improve the financial management of local government entities with respect to federal, state, and local financial assistance;

(b) establish uniform requirements for financial reports and audits of local government entities;

(c) ensure constituent interests by determining that compliance with all appropriate statutes and regulations is accomplished;

(d) ensure that the financial condition and operations of the local government entities are reasonably conducted and reported;

(e) ensure that the stewardship of local government entities is conducted in a manner to preserve and protect the public trust;

(f) ensure that local government entities accomplish, with economy and efficiency, the duties and responsibilities of the entities in accordance with the legal requirements imposed and the desires of the public; and

(g) promote the efficient and effective use of audit resources.

History: En. 82-4517 by Sec. 3, Ch. 380, L. 1975; R.C.M. 1947, 82-4517; amd. Sec. 2, Ch. 489, L. 1991.

Cross-References

Constitutional mandate for strict financial accountability of local governments, Art. VIII, sec. 12, Mont. Const.

2-7-503. Financial reports and audits of local government entities — exception. (1) The governing body or managing or executive officer of a local government entity, other than a school district or associated cooperative, shall ensure that a financial report is made every year. A school district or associated cooperative shall comply with the provisions of 20-9-213. The financial report must cover the preceding fiscal year, be in a form prescribed by the department, and be completed within 6 months of the end of the reporting period. The local government entity shall submit the financial report to the department for review.

(2) The department shall prescribe a uniform reporting system for all local government entities subject to financial reporting requirements, other than school districts. The superintendent of public instruction shall prescribe the reporting requirements for school districts.

(3) (a) The governing body or managing or executive officer of each local government entity receiving revenue or financial assistance in the period covered by the financial report in excess of $200,000 shall cause an audit to be made at least every 2 years. The audit must cover the entity's preceding 2 fiscal years. The audit must commence within 9 months from the close of the last fiscal year of the audit period. The audit must be completed and submitted to the department for review within 1 year from the close of the last fiscal year covered by the audit.

(b) The governing body or managing or executive officer of a local government entity that does not meet the criteria established in subsection (3)(a) shall at least once every 4 years, if directed by the department, or, in the case of a school district, if directed by the department at the request of the superintendent of public instruction, cause a financial review, as defined by department rule, to be conducted of the financial statements of the entity for the preceding fiscal year.

(4) An audit conducted in accordance with this part is in lieu of any financial or financial and compliance audit of an individual financial assistance program that a local government is required to conduct under any other state or federal law or regulation. If an audit conducted pursuant to this part provides a state agency with the information that it requires to carry out its responsibilities under state or federal law or regulation, the state agency shall rely upon and use that information to plan and conduct its own audits or reviews in order to avoid a duplication of effort.

(5) In addition to the audits required by this section, the department may at any time conduct or contract for a special audit or review of the affairs of any local government entity referred to in this part. The special audit or review

must, to the extent practicable, build upon audits performed pursuant to this part.

(6) The fee for the special audit or review must be a charge based upon the costs incurred by the department in relation to the special audit or review. The audit fee must be paid by the local government entity to the state treasurer and must be deposited in the enterprise fund to the credit of the department.

(7) Subsections (1) through (3) do not apply to a local government entity that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. 82-4516, 82-4529 by Secs. 2, 15, Ch. 380, L. 1975; R.C.M. 1947, 82-4516(1) thru (3), 82-4529; amd. Sec. 1, Ch. 336, L. 1979; amd. Sec. 1, Ch. 573, L. 1981; amd. Sec. 1, Ch. 49, L. 1983; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 1, Ch. 84, L. 1985; amd. Sec. 1, Ch. 565, L. 1985; amd. Sec. 1, Ch. 673, L. 1985; amd. Sec. 1, Ch. 140, L. 1989; amd. Sec. 3, Ch. 489, L. 1991; amd. Sec. 5, Ch. 430, L. 1995; amd. Sec. 1, Ch. 91, L. 1997; amd. Sec. 1, Ch. 458, L. 1997.

Compiler's Comments

1997 Amendments: Chapter 91 in (3)(a), after "$200,000", deleted "or federal financial assistance in excess of $25,000"; and made minor changes in style. Amendment effective March 19, 1997.

Chapter 458 in (1), in third sentence, extended time for report from 4 months to 6 months after end of reporting period. Amendment effective April 30, 1997.

Retroactive Applicability: Section 2, Ch. 91, L. 1997, provided: "[This act] [2-7-503] applies retroactively, within the meaning of 1-2-109, to audits of local government entities for fiscal years beginning after June 30, 1996."

Applicability: Section 31, Ch. 458, L. 1997, provided: "[This act] [2-7-503] applies to municipal budgeting procedures commencing on July 1, 1997."

Cross-References

Fiscal strict accountability — local governments, Art. VIII, sec. 12, Mont. Const.

County budget law, Title 7, ch. 6, part 23; 7-6-2302.

Municipal budget law, Title 7, ch. 6, part 42; 7-6-4205.

Rural and municipal fire departments, Title 7, ch. 33.

Fire department retirement associations, Title 19, ch. 18.

Classification of school districts, 20-6-201, 20-6-301.

Irrigation districts — taxes and assessments, Title 85, ch. 7, part 21.

Conservancy district finances, Title 85, ch. 9, part 6.

2-7-504. Accounting methods — exception. (1) Unless otherwise required by law, the department shall prescribe by rule the general methods and details of accounting for the receipt and disbursement of all money belonging to local government entities and shall establish in those offices general methods and details of accounting. All local government entity officers shall conform with the accounting standards prescribed by the department.

(2) This section does not apply to a local government entity that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. 82-4530 by Sec. 16, Ch. 380, L. 1975; R.C.M. 1947, 82-4530; amd. Sec. 1, Ch. 1, Sp. L. June 1989; amd. Sec. 1, Ch. 11, Sp. L. June 1989; amd. Sec. 4, Ch. 489, L. 1991; amd. Sec. 6, Ch. 430, L. 1995.

2-7-505. Audit scope and standards. (1) Each audit must be a comprehensive audit of the affairs of the local government entity and must be made in accordance with auditing standards and in accordance with federal regulations adopted by the department by rule.

(2) The department, with cooperation from state agencies, shall prepare a local government compliance supplement that contains state and federal regulations applicable to local government entities.

History: **En. 82-4518 by Sec. 4, Ch. 380, L. 1975; R.C.M. 1947, 82-4518; amd. Sec. 2, Ch. 573, L. 1981; amd. Sec. 5, Ch. 489, L. 1991.**

2-7-506. Audit by independent auditor. (1) The department may prepare and maintain a roster of independent auditors authorized to conduct audits of local government entities. The roster must be available to local government entities subject to the reporting requirements of 2-7-503.

(2) The department, in consultation with the board, shall adopt rules governing the:

(a) criteria for the selection of the independent auditor;

(b) procedures and qualifications for placing applicants on the roster;

(c) procedures for reviewing the qualifications of independent auditors on the roster to justify their continuance on the roster; and

(d) fees payable to the department for application for placement on the roster.

(3) An audit made by an independent auditor must be pursuant to a contract entered into by the governing body or managing or executive officer of the local government. The department must be a party to the contract and the contract may not be executed until it is signed by the department. All contracts for conducting audits must be in a form prescribed or approved by the department.

(4) The department shall notify the local government entity of a required audit, the date the report is due, and the requirement that the local government entity, the independent auditor, and the department must be parties to the contract.

(5) If a local government entity fails to present a signed contract to the department for approval within 90 days of receipt of the audit notice, the department shall designate an independent auditor to perform the audit. The costs incurred by the department in arranging the audit must be paid by the local government entity to the department in the manner of other claims against the local government entity.

History: **En. 82-4525 by Sec. 11, Ch. 380, L. 1975; R.C.M. 1947, 82-4525; amd. Sec. 3, Ch. 573, L. 1981; amd. Sec. 1, Ch. 260, L. 1989; amd. Sec. 6, Ch. 489, L. 1991.**

Cross-References

Licensure of accountants, 2-15-1866; Title 37, ch. 50.

2-7-507. Duty of officers to aid in audit. The officers and employees of the local government entities referred to in this part shall provide all reasonable facilities for the audit and shall furnish all information to the independent auditor necessary for the conduct of the audit.

History: **En. 82-4527 by Sec. 13, Ch. 380, L. 1975; R.C.M. 1947, 82-4527; amd. Sec. 7, Ch. 489, L. 1991.**

2-7-508. Power to examine books and papers. The independent auditor may examine any books, papers, accounts, and documents in the office or possession of any local government entity.

History: **En. 82-4528 by Sec. 14, Ch. 380, L. 1975; R.C.M. 1947, 82-4528; amd. Sec. 8, Ch. 489, L. 1991.**

2-7-509. Audits of school-related organizations — costs — criteria. (1) The legislative auditor may conduct or have conducted an audit of the records of organizations referred to in 2-3-203(2).

(2) Before public funds are transferred to the organization, a member shall obtain the organization's written consent to:

(a) the audit provided for in subsection (1); and

(b) pay the costs of the audit.

(3) An audit of an organization performed under this section must determine if:

(a) the organization is carrying out only those activities or programs authorized by state law and its articles of incorporation, bylaws, and policies;

(b) expenditures are made in furtherance of authorized activities in accordance with applicable laws and its articles of incorporation, bylaws, and policies;

(c) the organization properly collects and accounts for all revenues and receipts arising from its activities in accordance with generally accepted accounting principles;

(d) the assets of the organization or the assets in its custody are adequately safeguarded and are controlled and used in an efficient manner; and

(e) reports and financial statements fully disclose the nature and scope of the activities conducted and provide a proper basis for evaluating the operations of the organization.

History: En. Sec. 1, Ch. 678, L. 1991.

2-7-510 reserved.

2-7-511. Access to public accounts — suspension of officer in case of discrepancy. (1) The independent auditor may count the cash, verify the bank accounts, and verify all accounts of a public officer whose accounts the independent auditor is examining under law.

(2) If an officer of any county, city, town, school, or other local government entity refuses to provide the independent auditor access during an audit of the officer's accounts to his cash, bank accounts, or any of the papers, vouchers, or records of his office or if the independent auditor finds a shortage of cash, the independent auditor shall immediately file a preliminary report showing the refusal of that officer or the existence of the shortage and the approximate amount of the shortage with the respective county, city, or town attorney and the governing body of the local government entity.

(3) Upon filing of the statement, the officer of the local government entity shall after notice and the opportunity for a hearing be suspended from the duties and emoluments of his office and the governing body of the local government entity shall appoint some qualified person to the office pending completion of the audit.

(4) Upon the completion of the audit by the independent auditor, if a shortage of cash existed in the accounts of the officer, the independent auditor shall notify the governing body of the local government entity of the shortage.

(5) If the governing body finds that a shortage exists and that the officer suspended is, by act or omission, responsible for the shortage, the officer's right to the office is forfeited and the report of the audit shall be referred to the county attorney.

History: En. 82-4526 by Sec. 12, Ch. 380, L. 1975; R.C.M. 1947, 82-4526; amd. Sec. 1, Ch. 43, L. 1981; amd. Sec. 9, Ch. 489, L. 1991.

Cross-References

Prosecutorial duty of County Attorney, 7-4-2712.

2-7-512. Exit review conference. Upon completion of each audit, the independent auditor is required to hold with the appropriate officials an exit review conference in which the audit results must be discussed.

History: En. 82-4519 by Sec. 5, Ch. 380, L. 1975; R.C.M. 1947, 82-4519; amd. Sec. 10, Ch. 489, L. 1991.

2-7-513. Content of audit report and financial report — exception. (1) The audit reports must comply with the reporting requirements of government auditing standards issued by the U.S. comptroller general and federal regulations adopted by department rule.

(2) (a) The department shall prescribe general methods and details of accounting for the financial report for local government entities other than schools. The financial report must be submitted in a form required by the department. The superintendent of public instruction shall prescribe the general methods and details of accounting for financial reports for schools.

(b) Subsection (2)(a) does not apply to a local government entity that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

History: En. 82-4520 by Sec. 6, Ch. 380, L. 1975; R.C.M. 1947, 82-4520; amd. Sec. 11, Ch. 489, L. 1991; amd. Sec. 7, Ch. 430, L. 1995.

2-7-514. Filing of audit report and financial report. (1) Completed audit reports must be filed with the department. Completed financial reports must be filed with the department as provided in 2-7-503(1). The state superintendent of public instruction shall file with the department a list of school districts subject to audit under 2-7-503(3). The list must be filed with the department within 6 months after the close of the fiscal year.

(2) At the time that the financial report is filed or, in the case of a school district, when the audit report is filed with the department, the local government entity shall pay to the department a filing fee. The department shall charge a filing fee to any local government entity required to have an audit under 2-7-503, which fee must be based upon the costs incurred by the department in the administration of this part. Notwithstanding the provisions of 20-9-343, the filing fees for school districts required by this section must be paid by the office of public instruction. The department shall adopt the fee schedule by rule based upon the local government entities' revenue amounts.

(3) Copies of the completed audit and financial reports must be made available by the department and the local government entity for public inspection during regular office hours.

(4) The department is authorized under this part to charge a surcharge on the filing fee to generate the necessary revenue to repay the general fund loan over a 5-year period. *(Subsection (4) terminates June 30, 1997—sec. 31, Ch. 489, L. 1991.)*

History: En. 82-4521 by Sec. 7, Ch. 380, L. 1975; R.C.M. 1947, 82-4521(1), (3); amd. Sec. 1, Ch. 169, L. 1985; amd. Sec. 2, Ch. 140, L. 1989; amd. Sec. 12, Ch. 489, L. 1991; amd. Sec. 1, Ch. 509, L. 1995.

2-7-515. Actions by governing bodies. (1) Upon receipt of the audit report, the governing bodies of each audited local government entity shall review the contents and within 30 days shall notify the department in writing as to what action they plan to take on any deficiencies or recommendations contained in the audit report. If no deficiencies or recommendations appear in the audit report, notification is not required.

(2) Notification to the department shall include a statement by the governing bodies that noted deficiencies or recommendations for improvement have been acted upon by adoption as recommended, adoption with modification, or rejection.

(3) The local government entity shall adopt measures to correct the report findings and submit a copy of the corrective action plan to the department and, if the local government entity is a school district, shall also send a copy to the superintendent of public instruction. The department shall notify the entity of the acceptance of the corrective measures. If the department and the local government entity fail to agree, a conference between the parties must be held. Failure to resolve findings or implement corrective measures shall result in the withholding of financial assistance in accordance with rules adopted by the department pending resolution or compliance.

(4) In cases where a violation of law or nonperformance of duty is found on the part of an officer, employee, or board, the officer, employee, or board must be proceeded against by the attorney general or county, city, or town attorney as provided by law. If a written request to do so is received from the department, the county, city, or town attorney shall report the proceedings instituted or to be instituted, relating to the violations of law and nonperformance of duty, to the department within 30 days after receiving the request. If the county, city, or town attorney fails or refuses to prosecute the case, the department may refer the case to the attorney general to prosecute the case at the expense of the local government entity.

History: En. 82-4521, 82-4522 by Secs. 7, 8, Ch. 380, L. 1975; R.C.M. 1947, 82-4521(2), 82-4522; amd. Sec. 1, Ch. 128, L. 1991; amd. Sec. 13, Ch. 489, L. 1991.

2-7-516. Audit fees. (1) The compensation to the independent auditor for conducting an audit must be agreed upon by the governing body or managing or executive officer of the local government entity and the independent auditor and must be paid in the manner that other claims against the local government entity are paid.

(2) The compensation for an audit conducted by the department must be paid by the local government entity to the state treasurer and be deposited in an enterprise fund to the credit of the department.

History: En. 82-4524 by Sec. 10, Ch. 380, L. 1975; R.C.M. 1947, 82-4524; amd. Sec. 4, Ch. 573, L. 1981; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 14, Ch. 489, L. 1991.

2-7-517. Penalty. (1) When a local government entity has failed to file a report as required by 2-7-503(1), unless an extension has been granted by the department for good cause shown, or to make the payment required by 2-7-514(2) within 60 days, the department may issue an order stopping payment of any state financial assistance to the local government entity or may charge a late payment penalty as adopted by rule. Upon receipt of the report or payment of the filing fee, all financial assistance that was withheld under this section must be released and paid to the local government entity.

(2) When a local government entity has failed to make payment as required by 2-7-516 within 60 days of receiving a bill for an audit, the department may issue an order stopping payment of any state financial aid to the local government entity. Upon payment for the audit, all financial aid that was withheld because of failure to make payment must be released and paid to the local government entity.

History: En. Sec. 6, Ch. 573, L. 1981; amd. Sec. 3, Ch. 3, L. 1985; amd. Sec. 15, Ch. 489, L. 1991; amd. Sec. 7, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (2), near middle of first sentence after "2-7-516", deleted "(1)". Amendment effective March 12, 1997.

2-7-518. Deposit of fees. All fees received from local government entities after June 30, 1981, shall be deposited in the enterprise fund to the credit of the department of commerce for administration of Title 2, chapter 7, part 5.

History: En. Sec. 7, Ch. 573, L. 1981; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 16, Ch. 489, L. 1991.

2-7-519 and 2-7-520 reserved.

2-7-521. Publication. (1) (a) After the expiration of the 30-day period provided for in 2-7-515(1), the local government entity shall send a copy of each audit report to a newspaper of general circulation in the area of the local government entity. However, each county audit report must be sent to the official newspaper of the county.

(b) For an audit report of a county or an incorporated city or town, the county, city, or town shall send to the appropriate newspaper a copy of a summary of significant findings regarding the audit report. The summary, which may not exceed 800 words, must be prepared by the independent auditor and contain a statement indicating that it is only a summary and is not intended to be used as an audit report.

(2) For an audit report of a county or incorporated city or town, a newspaper is required to publish only:

(a) the summary of significant findings provided for in subsection (1)(b); and

(b) a statement to the effect that the audit report is on file in its entirety and open to public inspection.

(3) For an audit report of a local government entity other than a county or incorporated city or town, the newspaper is required to publish only the statement provided for in subsection (2)(b) and a statement providing that the audited local government entity will send a copy of the audit report to any interested person upon request.

(4) Publication costs must be borne by the audited local government entity.

History: En. 82-4523 by Sec. 9, Ch. 380, L. 1975; R.C.M. 1947, 82-4523; amd. Sec. 1, Ch. 386, L. 1983; amd. Sec. 3, Ch. 140, L. 1989; amd. Sec. 1, Ch. 607, L. 1989; amd. Sec. 17, Ch. 489, L. 1991.

Cross-References

County advertising — contract with newspaper within county, 7-5-2411.

2-7-522. Report review. (1) The department shall determine whether the provisions of this part have been complied with by the independent auditor.

(2) Upon receipt of the audit report from the local government entity the department shall review the report. If the department determines the reporting requirements have not been met, the department shall notify the local government entity and the independent auditor submitting the report of the significant issues of noncompliance. The notification must include issuance of a statement of deficiencies by the department. The department shall allow the independent auditor 60 days to correct the identified deficiencies.

(3) If the corrections are not made within 60 days of the department's notice, the department shall notify the local government entity that the report has not been received. Failure to submit a report shall result in the withholding of payment of the audit fee pending resolution of the identified deficiencies or receipt of a corrected report.

(4) Upon review of the report, if the department determines the independent auditor has issued a report that fails to meet the auditing standards referred to in 2-7-513 or contains false or misleading information, the department shall notify the board.

(5) The department shall review the audit report findings and the response of the governing body or executive or managing officer of the local government entity submitted under 2-7-515. When the findings concern financial assistance, the department shall notify the state agency that is responsible for disbursing the state or federal funding.

(6) The department must have access in its office to the working papers of the independent auditor.

History: En. Sec. 18, Ch. 489, L. 1991.

CHAPTER 8

LEGISLATIVE REVIEW

Part 1 — Periodic Agency Evaluation

2-8-101. Purpose.
2-8-102. Definitions.
2-8-103. Repealed.
2-8-104. Repealed.
2-8-105. Determination of agencies and programs to be reviewed.
2-8-106 through 2-8-110 reserved.
2-8-111. Prereview responsibilities of agencies.
2-8-112. Legislative audit committee review and report — review criteria.
2-8-113. Hearings by standing committee — criteria for termination.
2-8-114 through 2-8-120 reserved.
2-8-121. Effect of termination.
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Part 2 — Committee Assessment of Boards (Repealed)

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Part 3 — Privatization Plan Review

2-8-301. Definitions.
2-8-302. Privatization plan — hearing.

2-8-303. Privatization plan — contents.
2-8-304. Review of privatized programs.

Part 1
Periodic Agency Evaluation

2-8-101. Purpose. (1) The legislature finds state government actions have produced a substantial increase in numbers of agencies, growth of programs, and proliferation of rules. The legislature questions whether conditions causing the establishment of these agencies, programs, and rules have not changed to such an extent as to remove the need for some or all of the agencies, programs, and rules.

(2) It is the intent of the legislature, by establishing a system of periodic evaluation of the need for and the performance of agencies or programs preparatory to termination, modification, or reestablishment, to be in a better position to ensure as follows:

(a) The executive department is responsive to the needs of all of the people of the state.

(b) No agency, program, or rule exists which is not responsive to those needs.

(c) No profession, occupation, business, industry, or other endeavor is subject to the state's regulatory power unless the exercise of such power is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage. The exercise of the state's police power shall be done only to the extent necessary for that purpose.

(d) The state may not regulate a profession, occupation, industry, business, or other endeavor in a manner which will unreasonably adversely affect the competitive market.

(e) There exists a systematic legislative review of the need for and public benefits derived from a program or function by a periodic review and termination, modification, or reestablishment of such programs and functions.

History: En. 82-4601 by Sec. 1, Ch. 562, L. 1977; R.C.M. 1947, 82-4601; amd. Sec. 2, Ch. 321, L. 1983.

2-8-102. Definitions. As used in this part, the following definitions apply:

(1) "Agency" means an office, position, commission, committee, board, department, council, division, bureau, section, or any other entity or instrumentality of the executive department of state government.

(2) "Performance audit" means an examination of the effectiveness of administration and its efficiency and adequacy in terms of the program of a state agency authorized by law to be performed and the conformance of expenditures with legislative intent. Audits conducted shall include an analysis of the operation of the agency, with special regard to the duplication of efforts between the audited agency or program and other agencies or programs and the quality of service being rendered.

(3) "Program" means any legislatively or administratively created function, project, or duty of an agency.

History: En. 82-4602 by Sec. 2, Ch. 562, L. 1977; R.C.M. 1947, 82-4602; amd. Sec. 3, Ch. 321, L. 1983.

Cross-References

"School district" — application to community college districts, 20-15-403.

2-8-103. Repealed. Sec. 9, Ch. 321, L. 1983.

History: En. 82-4603 by Sec. 3, Ch. 562, L. 1977; R.C.M. 1947, 82-4603; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 2, Ch. 321, L. 1979; amd. Sec. 2, Ch. 325, L. 1979; amd. Sec. 8, Ch. 351, L. 1979; amd. Sec. 2, Ch. 364, L. 1979; amd. Sec. 2, Ch. 388, L. 1979; amd. Sec. 2, Ch. 408, L. 1979; amd. Sec. 2, Ch. 439, L. 1979; amd. Sec. 1, Ch. 462, L. 1979; amd. Sec. 2, Ch. 491, L. 1979; amd. Sec. 2, Ch. 546, L. 1979; amd. Sec. 2, Ch. 549, L. 1979; amd. Sec. 2, Ch. 655, L. 1979; amd. Sec. 2, Ch. 684, L. 1979; amd. Sec. 2, Ch. 96, L. 1981; amd. Sec. 2, Ch. 106, L. 1981; amd. Sec. 2, Ch. 149, L. 1981; amd. Sec. 2, Ch. 154, L. 1981; amd. Sec. 2, Ch. 155, L. 1981; amd. Sec. 2, Ch. 243, L. 1981; amd. Sec. 2, Ch. 248, L. 1981; amd. Sec. 2, Ch. 292, L. 1981; amd. Sec. 2, Ch. 307, L. 1981; amd. Sec. 2, Ch. 323, L. 1981; amd. Sec. 2, Ch. 324, L. 1981; amd. Sec. 2, Ch. 326, L. 1981; amd. Sec. 2, Ch. 362, L. 1981; amd. Sec. 2, Ch. 363, L. 1981; amd. Sec. 2, Ch. 378, L. 1981; amd. Sec. 2, Ch. 444, L. 1981; amd. Sec. 2, Ch. 543, L. 1981; amd. Sec. 2, Ch. 544, L. 1981.

2-8-104. Repealed. Sec. 9, Ch. 321, L. 1983.

History: En. 82-4609 by Sec. 9, Ch. 562, L. 1977; R.C.M. 1947, 82-4609.

2-8-105. Determination of agencies and programs to be reviewed. (1) Before September 1 of each even-numbered year, the governor may furnish the legislative audit committee with a list of his recommendations for agencies and programs to be terminated and subject to a performance audit during the next biennium pursuant to the provisions of this chapter. The list must be prioritized and must set forth the governor's reasons for recommending each agency or program for review.

(2) The legislative audit committee shall review the list submitted by the governor, suggestions from legislators and legislative committees, staff recommendations, and any other relevant information and compile recommendations of agencies and programs to be terminated and subject to a performance audit. The committee shall submit its recommendations to the next legislature in the form of a bill terminating those designated agencies and programs at the times specified in the bill and requiring a performance audit of each agency and program under the provisions of Title 2, chapter 8, within the time specified and prior to termination.

History: En. Sec. 1, Ch. 321, L. 1983.

Cross-References

Legislative Audit Committee, Title 5, ch. 13, part 2.

2-8-106 through 2-8-110 reserved.

2-8-111. Prereview responsibilities of agencies. An agency designated for termination or whose program or programs are designated for termination shall, by 22 months preceding the date set for termination:

(1) delineate the goals of the programs, which goals reflect the state's constitution, statutes, and authoritative judicial, legislative, and executive decisions or pronouncements;

(2) delineate the objectives of the programs and lay out, clearly enough to be tested, the logic in the assumptions linking expenditures to outcome

anticipated, outcome anticipated to objectives, and objectives to impact on problems addressed in goals;

(3) furnish to the legislative auditor, upon request of the auditor, the information necessary to conduct a performance audit as required by this chapter.

History: En. 82-4605 by Sec. 5, Ch. 562, L. 1977; R.C.M. 1947, 82-4605; amd. Sec. 4, Ch. 321, L. 1983.

2-8-112. Legislative audit committee review and report — review criteria. (1) The legislative audit committee is responsible for conducting a review of each agency or program scheduled for termination. The review shall be completed at least 6 months prior to the date set for termination. If for any reason a review of an agency or program cannot be completed as required by this chapter, the legislative audit committee shall submit a proposed bill for the ensuing legislative session to reestablish the agency or program.

(2) The review conducted shall include a performance audit of the agency or program, with emphasis on its effect on the public health, safety, and welfare.

(3) The legislative audit committee shall assist in the implementation of the provisions of this part and shall establish administrative procedures which facilitate the review and evaluation as required in this part.

(4) Upon completion of its review, the legislative audit committee shall, as provided in 5-11-210, make a report of its recommendations for continuation, modification, or termination and submit a proposed bill to the ensuing legislative session. If termination is recommended, the bill should repeal or otherwise deal with all statutes and parts of statutes relating to the agency's or program's activities.

History: En. 82-4604 by Sec. 4, Ch. 562, L. 1977; R.C.M. 1947, 82-4604; amd. Sec. 5, Ch. 321, L. 1983; amd. Sec. 5, Ch. 112, L. 1991.

Cross-References

Legislative Audit Committee, Title 5, ch. 13, part 2.

2-8-113. Hearings by standing committee — criteria for termination. (1) Prior to termination of an agency or program, the appropriate standing committee in each house of the legislature or a joint committee of both houses composed of members of the standing committee assigned to conduct the hearing shall hold a public hearing, receiving testimony from the public and the head of the department to which the agency or program involved is attached, the head of the agency involved, and persons who conducted the review.

(2) In the event termination of an agency or program is recommended by the legislative audit committee, the agency involved in the termination has the burden of demonstrating a public need for the agency's or program's continued existence and the extent to which a change in the composition, structure, and operation of the agency or program would improve public health, safety, or welfare.

(3) In determining whether to reestablish an agency or program, the legislature shall consider the performance audit and review conducted by the legislative audit committee, public testimony, and other matters considered relevant by the committee.

History: En. 82-4606 by Sec. 6, Ch. 562, L. 1977; R.C.M. 1947, 82-4606; amd. Sec. 6, Ch. 321, L. 1983; amd. Sec. 8, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (3), after "public testimony", deleted "responsive to the questions set forth in subsection (2) of 2-8-112"; and made minor changes in style. Amendment effective March 12, 1997.

2-8-114 through 2-8-120 reserved.

2-8-121. Effect of termination. Unless otherwise provided, upon termination, each agency, program, or unit shall continue in existence until July 1 of the next succeeding year for the purpose of winding up its affairs. During the windup period, termination does not reduce or otherwise limit the powers or authority of each respective agency or program except that no action may be taken which would continue in effect beyond the 1-year windup period. Upon the expiration of the 1 year after termination, each agency or program not modified or reestablished shall be abolished and all unexpended balances of appropriations, allocations, or other funds shall revert to the fund from which they were appropriated or, if that fund is abolished, to the general fund.

History: En. 82-4607 by Sec. 7, Ch. 562, L. 1977; R.C.M. 1947, 82-4607; amd. Sec. 2, Ch. 497, L. 1979; amd. Sec. 7, Ch. 321, L. 1983.

Cross-References

Termination of state agencies, Title 2, ch. 19.

2-8-122. Reestablishment. (1) Any agency or program scheduled for termination under this part or any subsequent act may be reestablished by the legislature.

(2) No more than one agency or program may be continued or reestablished in any bill for an act, and the agency or program shall be mentioned in the bill's title.

History: En. 82-4608 by Sec. 8, Ch. 562, L. 1977; R.C.M. 1947, 82-4608; amd. Sec. 8, Ch. 321, L. 1983.

Part 2

Committee Assessment of Boards (Repealed)

2-8-201 through 2-8-208. Repealed. Sec. 2, Ch. 274, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

2-8-201. En. Sec. 1, Ch. 266, L. 1987.

2-8-202. En. Sec. 2, Ch. 266, L. 1987; amd. Sec. 1, Ch. 124, L. 1989.

2-8-203. En. Sec. 3, Ch. 266, L. 1987; amd. Sec. 1, Ch. 710, L. 1989; amd. Sec. 6, Ch. 112, L. 1991.

2-8-204. En. Sec. 4, Ch. 266, L. 1987; amd. Sec. 2, Ch. 710, L. 1989.

2-8-205. En. Sec. 5, Ch. 266, L. 1987; amd. Sec. 3, Ch. 710, L. 1989; amd. Sec. 1, Ch. 195, L. 1991.

2-8-206. En. Sec. 6, Ch. 266, L. 1987; amd. Sec. 6, Ch. 710, L. 1989; amd. Sec. 2, Ch. 195, L. 1991.

2-8-207. En. Sec. 7, Ch. 266, L. 1987; amd. Sec. 4, Ch. 710, L. 1989; amd. Sec. 7, Ch. 112, L. 1991; amd. Sec. 3, Ch. 195, L. 1991.

2-8-208. En. Sec. 8, Ch. 266, L. 1987; amd. Sec. 5, Ch. 710, L. 1989; amd. Sec. 8, Ch. 112, L. 1991; amd. Sec. 5, Ch. 349, L. 1993.

2-8-209. Repealed. Sec. 5, Ch. 195, L. 1991.

History: En. Sec. 2, Ch. 124, L. 1989.

Part 3
Privatization Plan Review

2-8-301. Definitions. As used in this part, the following definitions apply:

(1) "Agency" means an office, position, commission, committee, board, department, council, division, bureau, section, or any other entity or instrumentality of the executive, legislative, or judicial branch of state government.

(2) "Private sector" means any entity or individual not principally a part of or associated with a governmental unit that is associated with or involved in commercial activity.

(3) "Privatize" means an agency contracting with the private sector to provide services normally conducted directly by the employees of the agency if the contract displaces five or more current state employees. For the purposes of this subsection, an employee is displaced if the privatization proposal will result in his layoff, demotion, or involuntary transfer to a new location requiring a change in residence of the employee.

(4) "Program" means a legislatively or administratively created function, project, or duty of an agency.

History: En. Sec. 1, Ch. 762, L. 1991.

2-8-302. Privatization plan — hearing. Before an agency may privatize a program it shall prepare a privatization plan as provided in 2-8-303. The privatization plan must be released to the public and any affected employee organizations and must be submitted to the legislative audit committee at least 90 days prior to the proposed implementation date. At least 60 days prior to the proposed implementation date, the legislative audit committee shall conduct a public hearing on the proposed privatization plan at which public comments and testimony must be received. At least 15 days prior to the proposed implementation date, the legislative audit committee shall release to the public a summary of the results of the hearing, including any recommendations of the committee relating to the proposed privatization plan.

History: En. Sec. 2, Ch. 762, L. 1991.

Cross-References

Legislative Audit Committee, Title 5, ch. 13.

2-8-303. Privatization plan — contents. (1) An agency proposing to privatize a program shall prepare a privatization plan that includes the following:

(a) a description of the program to be privatized, including references to the legal authority under which the program was created;

(b) detailed budget information that includes a list of expenditures for the 2 most recent fiscal years and the sources of revenue for the program;

(c) a list of all personnel currently employed in the program and the estimated effect of the proposed privatization on their employment status;

(d) a listing of the assets of the program and their proposed disposition if the plan is implemented;

(e) an estimate of the cost savings or any additional costs resulting from privatizing the program, compared to the costs of the existing, nonprivatized program. Additional costs must include the estimated cost to the state of inspection, supervision, and monitoring of the proposed privatization and the costs incurred in the discontinuation of such a contract.

(f) the estimated current and future economic impacts of the implementation of the plan on other state programs, including public assistance programs, unemployment insurance programs, retirement programs, and agency personal services budgets used to pay out accrued vacation and sick leave benefits;

(g) the estimated increases or decreases in costs and quality of goods or services to the public if the plan is implemented;

(h) the estimated changes in individual wages and benefits resulting from the proposed privatization;

(i) a narrative explanation and justification for the proposed privatization.

(2) To implement the privatization plan, an agency may transfer funds between budget categories.

History: En. Sec. 3, Ch. 762, L. 1991.

2-8-304. Review of privatized programs. (1) If during audits of state agencies, the legislative auditor identifies programs being conducted by an agency under contract that may be administered more cost-effectively directly by the agency or identifies services performed by an agency that may be performed more cost-effectively by the private sector, the legislative auditor shall submit this information to the legislative audit committee.

(2) Members of the public, elected bargaining agents or employee representatives, elected officials, legislators, and agency directors may submit to the legislative audit committee a request to review programs being conducted under contract by an agency that may be administered more cost-effectively directly by the agency.

(3) The office of budget and program planning shall submit to the legislative audit committee, by July 1 of each odd-numbered year:

(a) a list of all programs accounted for in an enterprise fund or an internal service fund; and

(b) a request for privatization review under subsection (1) of at least two of the programs identified in subsection (3)(a), including any available information and criteria required under 2-8-303.

(4) The legislative audit committee shall review the information and requests provided under subsections (1) and (2) and may direct the legislative auditor to conduct a review of any contracted program or program administered directly by the agency, or both. The review must include a report to the legislative audit committee that includes the information required in a privatization plan under 2-8-303.

(5) The report required by subsection (4) must be provided to the legislative audit committee and released to the public. Not less than 30 days after the release of the report, the legislative audit committee shall conduct a public hearing on the report at which public comments and testimony must be received. Upon completion of the hearing on the report, the legislative audit

committee may make recommendations that it believes appropriate concerning the program.

History: **En. Sec. 4, Ch. 762, L. 1991; amd. Sec. 1, Ch. 556, L. 1995.**

Cross-References

Legislative Audit Committee, Title 5, ch. 13.

CHAPTER 9

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Chapter Cross-References

Crime victim assistance by government — no cause of action against government for damages, 46-24-105.

Part 1

Liability Exposure

2-9-101. Definitions. As used in parts 1 through 3 of this chapter, the following definitions apply:

(1) "Claim" means any claim against a governmental entity, for money damages only, which any person is legally entitled to recover as damages because of personal injury or property damage caused by a negligent or wrongful act or omission committed by any employee of the governmental

entity while acting within the scope of his employment, under circumstances where the governmental entity, if a private person, would be liable to the claimant for such damages under the laws of the state. For purposes of this section and the limit of liability contained in 2-9-108, all claims which arise or derive from personal injury to or death of a single person, or damage to property of a person, regardless of the number of persons or entities claiming damages thereby, are considered one claim.

(2) "Employee" means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting on behalf of the governmental entity in any official capacity temporarily or permanently in the service of the governmental entity whether with or without compensation, but the term employee shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity to which parts 1 through 3 apply in the event of a claim.

(3) "Governmental entity" means and includes the state and political subdivisions as herein defined.

(4) "Personal injury" means any injury resulting from libel, slander, malicious prosecution, or false arrest, any bodily injury, sickness, disease, or death sustained by any person and caused by an occurrence for which the state may be held liable.

(5) "Political subdivision" means any county, city, municipal corporation, school district, special improvement or taxing district, or any other political subdivision or public corporation.

(6) "Property damage" means injury or destruction to tangible property, including loss of use thereof, caused by an occurrence for which the state may be held liable.

(7) "State" means the state of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality thereof.

History: (1)En. Sec. 2, Ch. 380, L. 1973; Sec. 82-4302, R.C.M. 1947; (2)En. 82-4334 by Sec. 8, Ch. 189, L. 1977; Sec. 82-4334, R.C.M. 1947; R.C.M. 1947, 82-4302, 82-4334(3); amd. Sec. 3, Ch. 675, L. 1983; amd. Sec. 1, Ch. 389, L. 1985; amd. Secs. 1, 3, Ch. 22, Sp. L. June 1986.

2-9-102. Governmental entities liable for torts except as specifically provided by legislature. Every governmental entity is subject to liability for its torts and those of its employees acting within the scope of their employment or duties whether arising out of a governmental or proprietary function except as specifically provided by the legislature under Article II, section 18, of The Constitution of the State of Montana.

History: En. Sec. 10, Ch. 380, L. 1973; amd. Sec. 1, Ch. 189, L. 1977; R.C.M. 1947, 82-4310.

Cross-References

State subject to suit, Art. II, sec. 18, Mont. Const.

2-9-103. Actions under invalid law or rule — same as if valid — when. (1) If an officer, agent, or employee of a governmental entity acts in good faith, without malice or corruption, and under the authority of law and that law is subsequently declared invalid as in conflict with the constitution of Montana or the constitution of the United States, neither he nor any other officer or employee of the governmental entity he represents nor the governmental entity he represents is civilly liable in any action in which he, such other officer, or such governmental entity would not have been liable had the law been valid.

(2) If an officer, agent, or employee of a governmental entity acts in good faith, without malice or corruption, and under the authority of a duly promulgated rule or ordinance and that rule or ordinance is subsequently declared invalid, neither he nor any other officer, agent, or employee of the governmental entity he represents nor the governmental entity he represents is civilly liable in any action in which no liability would attach had the rule or ordinance been valid.

History: En. 82-4333 by Sec. 7, Ch. 189, L. 1977; R.C.M. 1947, 82-4333; amd. Sec. 7, Ch. 184, L. 1979.

Cross-References

Requisites for validity of rule, 2-4-305.

2-9-104. Repealed. Sec. 4, Ch. 675, L. 1983.

History: En. 82-4334 by Sec. 8, Ch. 189, L. 1977; R.C.M. 1947, 82-4334(1), (2); amd. Sec. 2, Ch. 425, L. 1979.

2-9-105. State or other governmental entity immune from exemplary and punitive damages. The state and other governmental entities are immune from exemplary and punitive damages.

History: En. 82-4332 by Sec. 6, Ch. 189, L. 1977; R.C.M. 1947, 82-4332.

Cross-References

Exemplary damages, 27-1-221.

2-9-106. Repealed. Sec. 4, Ch. 22, Sp. L. June 1986.

History: En. Sec. 1, Ch. 675, L. 1983.

2-9-107. Repealed. Sec. 4, Ch. 22, Sp. L. June 1986.

History: En. Sec. 2, Ch. 675, L. 1983; amd. Sec. 2, Ch. 389, L. 1985.

2-9-108. Limitation on governmental liability for damages in tort. (1) The state, a county, municipality, taxing district, or any other political subdivision of the state is not liable in tort action for damages suffered as a result of an act or omission of an officer, agent, or employee of that entity in excess of $750,000 for each claim and $1.5 million for each occurrence.

(2) The state, a county, municipality, taxing district, or any other political subdivision of the state is not liable in tort action for damages suffered as a result of negligence of an officer, agent, or employee of that entity by a person while the person was confined in or was otherwise in or on the premises of a correctional or detention institution or facility to serve a sentence imposed upon conviction of a criminal offense. The immunity granted by this subsection does not extend to serious bodily injury or death resulting from negligence or to damages resulting from medical malpractice, gross negligence, willful or wanton misconduct, or an intentional tort. The subsection does not create an exception from the dollar limitations provided for in subsection (1).

(3) An insurer is not liable for excess damages unless the insurer specifically agrees by written endorsement to provide coverage to the governmental agency involved in amounts in excess of a limitation stated in this section, in which case the insurer may not claim the benefits of the limitation specifically waived.

History: En. Sec. 2, Ch. 22, Sp. L. June 1986; amd. Sec. 1, Ch. 337, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 337 inserted (2) providing that state, county, municipality, taxing districts, and other state political subdivisions are not liable for negligent actions of officers, agents, or employees for damages suffered by persons on the premises of a correctional or detention facility who are serving a sentence for a crime, creating an exemption to immunity for medical malpractice, gross negligence, willful or wanton conduct, and intentional tort, and providing that subsection (2) does not create an exception from the dollar limitations established in subsection (1); and made minor changes in style. Amendment effective April 22, 1997.

2-9-109 and 2-9-110 reserved.

2-9-111. Immunity from suit for legislative acts and omissions. (1) As used in this section:

(a) the term "governmental entity" means only the state, counties, municipalities, school districts, and any other local government entity or local political subdivision vested with legislative power by statute;

(b) the term "legislative body" means only the legislature vested with legislative power by Article V of The Constitution of the State of Montana and that branch or portion of any other local governmental entity or local political subdivision empowered by law to consider and enact statutes, charters, ordinances, orders, rules, policies, resolutions, or resolves;

(c) (i) the term "legislative act" means:

(A) actions by a legislative body that result in creation of law or declaration of public policy;

(B) other actions of the legislature authorized by Article V of The Constitution of the State of Montana; or

(C) actions by a school board that result in adoption of school board policies pursuant to 20-3-323(1);

(ii) the term legislative act does not include administrative actions undertaken in the execution of a law or public policy.

(2) A governmental entity is immune from suit for a legislative act or omission by its legislative body, or any member or staff of the legislative body, engaged in legislative acts.

(3) Any member or staff of a legislative body is immune from suit for damages arising from the lawful discharge of an official duty associated with legislative acts of the legislative body.

(4) The acquisition of insurance coverage, including self-insurance or group self-insurance, by a governmental entity does not waive the immunity provided by this section.

(5) The immunity provided for in this section does not extend to:

(a) any tort committed by the use of a motor vehicle, aircraft, or other means of transportation; or

(b) any act or omission that results in or contributes to personal injury or property damage caused by contamination or other alteration of the physical, chemical, or biological properties of surface water or ground water, for which a cause of action exists in statutory or common law or at equity. This subsection (b) does not create a separate or new cause of action.

History: En. 82-4328 by Sec. 2, Ch. 189, L. 1977; R.C.M. 1947, 82-4328; amd. Sec. 1, Ch. 818, L. 1991; amd. Sec. 1, Ch. 821, L. 1991.

Cross-References

Immunity, Art. V, sec. 8, Mont. Const.

2-9-112. Immunity from suit for judicial acts and omissions. (1) The state and other governmental units are immune from suit for acts or omissions of the judiciary.

(2) A member, officer, or agent of the judiciary is immune from suit for damages arising from his lawful discharge of an official duty associated with judicial actions of the court.

(3) The judiciary includes those courts established in accordance with Article VII of The Constitution of the State of Montana.

History: En. 82-4329 by Sec. 3, Ch. 189, L. 1977; R.C.M. 1947, 82-4329.

2-9-113. Immunity from suit for certain gubernatorial actions. The state and the governor are immune from suit for damages arising from the lawful discharge of an official duty associated with vetoing or approving bills or in calling sessions of the legislature.

History: En. 82-4330 by Sec. 4, Ch. 189, L. 1977; R.C.M. 1947, 82-4330.

Cross-References

Special sessions — call by members, Art. V, sec. 6, Mont. Const.; 5-2-103.

Veto power, Art. VI, sec. 10, Mont. Const.

Governor's call for special sessions of Legislature, Art. VI, sec. 11, Mont. Const.; 5-2-103.

Action by Governor on bills, Title 5, ch. 4, part 3.

2-9-114. Immunity from suit for certain actions by local elected executives. A local governmental entity and the elected executive officer thereof are immune from suit for damages arising from the lawful discharge of an official duty associated with vetoing or approving ordinances or other legislative acts or in calling sessions of the legislative body.

History: En. 82-4331 by Sec. 5, Ch. 189, L. 1977; R.C.M. 1947, 82-4331.

Part 2

Comprehensive State Insurance Plan

2-9-201. Comprehensive insurance plan for state. (1) The department of administration is responsible for the acquisition and administration of all the insurance purchased for protection of the state, as defined in 2-9-101.

(2) The department of administration shall, after consultation with the departments, agencies, commissions, and other instrumentalities of the state, provide a comprehensive insurance plan for the state providing insurance coverage to the state in amounts determined and set by the department of administration and may purchase, renew, cancel, and modify all policies according to the comprehensive insurance plan. The plan may include property, casualty, liability, crime, fidelity, and any such other policies of insurance as the department of administration may from time to time deem reasonable and prudent.

(3) The department of administration may in its discretion elect to utilize a deductible insurance plan, either wholly or in part.

(4) Only the department of administration may procure insurance under parts 1 through 3 of this chapter except as otherwise provided herein.

(5) All offices, departments, agencies, authorities, commissions, boards, institutions, hospitals, colleges, universities, and other instrumentalities of the state hereafter called state participants shall comply with parts 1 through 3 and the insurance plan developed by the department of administration.

History: **(1) thru (3)En. Sec. 3, Ch. 380, L. 1973; amd. Sec. 1, Ch. 143, L. 1974; amd. Sec. 1, Ch. 360, L. 1977; Sec. 82-4303, R.C.M. 1947; (4), (5)En. Sec. 4, Ch. 380, L. 1973; Sec. 82-4304, R.C.M. 1947; R.C.M. 1947, 82-4303, 82-4304.**

Cross-References

Insurance of state buildings and contents, 2-17-104.

2-9-202. Apportionment of costs — creation of deductible reserve. (1) The department of administration shall apportion the costs of all insurance purchased under 2-9-201 to the individual state participants, and the costs must be paid to the department subject to appropriations by the legislature.

(2) The department, if it elects to use a deductible insurance plan, is authorized to charge the individual state participants an amount equal to the cost of a full-coverage insurance plan until such time as a deductible reserve is established. In each subsequent year, the department may charge a sufficient amount over the actual cost of the deductible insurance to replenish the deductible reserves.

(3) The department may accumulate a self-insurance reserve fund sufficient to provide self-insurance for all liability coverages that in its discretion the department considers should be self-insured. Payments into the self-insurance reserve fund must be made from a legislative appropriation for that purpose. Proceeds of the fund must be used by the department to pay claims under parts 1 through 3 of this chapter. Expenditures for actual and necessary expenses required for the efficient administration of the fund must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

(4) Money in reserve funds established under this section that is not needed to meet expected expenditures must be invested and all proceeds of the investment credited to the fund.

History: **En. Sec. 5, Ch. 380, L. 1973; amd. Sec. 2, Ch. 360, L. 1977; R.C.M. 1947, 82-4305; amd. Sec. 3, Ch. 703, L. 1985; amd. Sec. 1, Ch. 532, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 532 in (3), in third sentence after "fund", substituted "must be used by" for "are statutorily appropriated, as provided in 17-7-502, to"; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Unified investment program, Title 17, ch. 6, part 2.

2-9-203 through 2-9-210 reserved.

2-9-211. Political subdivision insurance. (1) All political subdivisions of the state may procure insurance separately or jointly with other subdivisions and may elect to use a deductible or self-insurance plan, wholly or in part. Political subdivisions that elect to procure insurance jointly (pooled fund) under this section may obtain excess coverage from a surplus lines insurer without proceeding under the provisions of 33-2-302(2) through (4). Political subdivisions that are not in a pooled fund may obtain excess coverage from a surplus lines insurer without proceeding under the provisions of 33-2-302(2) through (4) only if the insurer carries an A rating or better by a nationally recognized rating company or is a Lloyds of London underwriter.

(2) A political subdivision that elects to establish a deductible plan may establish a deductible reserve separately or jointly with other subdivisions.

(3) A political subdivision that elects to establish a self-insurance plan may accumulate a self-insurance reserve fund, separately or jointly with other subdivisions, sufficient to provide self-insurance for all liability coverages that, in its discretion, the political subdivision considers should be self-insured. Payments into the reserve fund must be made from local legislative appropriations for that purpose or from the proceeds of bonds or notes authorized by subsection (5). Proceeds of the fund may be used only to pay claims under parts 1 through 3 of this chapter and for actual and necessary expenses required for the efficient administration of the fund.

(4) Money in reserve funds established under this section not needed to meet expected expenditures must be invested, and all proceeds of the investment must be credited to the fund.

(5) A political subdivision may issue and sell its bonds or notes for purposes of funding a self-insurance or deductible reserve fund and costs incident to the reserve fund in an amount not exceeding 3% of the taxable value of the political subdivision as of the date of issuance. The bonds or notes must be authorized by resolution of the governing body, are payable from the taxes authorized by 2-9-212, may be sold at public or private sale, do not constitute debt within the meaning of any statutory debt limitation, and may contain other terms and provisions as the governing body determines. Two or more political subdivisions may agree pursuant to an interlocal agreement to exercise their respective borrowing powers under this section jointly and may authorize a joint board created pursuant to the agreement to exercise powers on their behalf.

History: En. Sec. 6, Ch. 380, L. 1973; amd. Sec. 3, Ch. 360, L. 1977; R.C.M. 1947, 82-4306; amd. Sec. 1, Ch. 3, Sp. L. March 1986; amd. Sec. 1, Ch. 68, L. 1995.

Cross-References

Unified investment fund — local governments may use, 17-6-204.

2-9-212. Political subdivision tax levy to pay premiums. Notwithstanding any provisions of law to the contrary, a political subdivision, except for a school district, may levy an annual property tax in the amount necessary to fund the premium for insurance, deductible reserve fund, and self-insurance reserve fund as herein authorized and to pay the principal and interest on bonds or notes issued pursuant to 2-9-211(5), even though as a result of such levy the maximum levy as otherwise restricted by law is exceeded thereby, provided that the revenues derived therefrom may not be used for any other purpose.

History: En. Sec. 9, Ch. 380, L. 1973; amd. Sec. 4, Ch. 360, L. 1977; R.C.M. 1947, 82-4309; amd. Sec. 2, Ch. 3, Sp. L. March 1986; amd. Sec. 1, Ch. 568, L. 1991.

Cross-References

Property tax limitation, Title 15, ch. 10, part 4.

Part 3

Claims and Actions

Part Cross-References

Venue of actions against state, county, and political subdivisions, 25-2-126.

2-9-301. Filing of claims against state and political subdivisions — disposition by state agency as prerequisite. (1) All claims against the state arising under the provisions of parts 1 through 3 of this chapter must be presented in writing to the department of administration.

(2) A complaint based on a claim subject to the provisions of subsection (1) may not be filed in district court unless the claimant has first presented the claim to the department of administration and the department has finally denied the claim. The department must grant or deny the claim in writing within 120 days after the claim is presented to the department. The failure of the department to make final disposition of a claim within 120 days after it is presented to the department must be considered a final denial of the claim for purposes of this subsection. Upon the department's receipt of the claim, the statute of limitations on the claim is tolled for 120 days. The provisions of this subsection do not apply to claims that may be asserted under Title 25, chapter 20, by third-party complaint, cross-claim, or counterclaim.

(3) All claims against a political subdivision arising under the provisions of parts 1 through 3 shall be presented to and filed with the clerk or secretary of the political subdivision.

History: (1)En. Sec. 11, Ch. 380, L. 1973; amd. Sec. 1, Ch. 361, L. 1975; amd. Sec. 5, Ch. 360, L. 1977; Sec. 82-4311, R.C.M. 1947; (2)En. Sec. 12, Ch. 380, L. 1973; amd. Sec. 6, Ch. 360, L. 1977; Sec. 82-4312, R.C.M. 1947; R.C.M. 1947, 82-4311, 82-4312; amd. Sec. 1, Ch. 507, L. 1987; amd. Sec. 1, Ch. 494, L. 1991.

2-9-302. Time for filing — limitation of actions. A claim against the state or a political subdivision is subject to the limitation of actions provided by law.

History: En. 82-4312.1 by Sec. 7, Ch. 360, L. 1977; R.C.M. 1947, 82-4312.1.

Cross-References

Statutes of limitations, Title 27, ch. 2.

2-9-303. Compromise or settlement of claim against state. (1) The department of administration may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of insurance, if any. A settlement from the self-insurance reserve fund or deductible reserve fund exceeding $10,000 must be approved by the district court of the first judicial district except when suit has been filed in another judicial district, in which case the presiding judge must approve the compromise settlement.

(2) All terms, conditions, and details of the governmental portion of a compromise or settlement agreement entered into or approved pursuant to subsection (1) are public records available for public inspection.

History: En. Sec. 19, Ch. 380, L. 1973; amd. Sec. 9, Ch. 360, L. 1977; R.C.M. 1947, 82-4319; amd. Sec. 1, Ch. 63, L. 1981; amd. Sec. 1, Ch. 97, L. 1987; amd. Sec. 1, Ch. 111, L. 1987.

Cross-References

Right to examine documents of public bodies, Art. II, sec. 9, Mont. Const.

2-9-304. Compromise or settlement of claim against political subdivision. (1) The governing body of each political subdivision, after conferring with its legal officer or counsel, may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of insurance, if any.

(2) All terms, conditions, and details of the governmental portion of a compromise or settlement agreement entered into pursuant to subsection (1) are public records available for public inspection.

History: En. Sec. 18, Ch. 380, L. 1973; amd. Sec. 8, Ch. 360, L. 1977; R.C.M. 1947, 82-4318; amd. Sec. 2, Ch. 111, L. 1987; amd. Sec. 1, Ch. 103, L. 1995.

Cross-References

Right to examine documents of public bodies, Art. II, sec. 9, Mont. Const.

Joinder of parties, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).

Principal's responsibility for agent's negligence, 28-10-602.

Indemnity, Title 28, ch. 11, part 3.

2-9-305. Immunization, defense, and indemnification of employees. (1) It is the purpose of this section to provide for the immunization, defense, and indemnification of public officers and employees civilly sued for their actions taken within the course and scope of their employment.

(2) In any noncriminal action brought against any employee of a state, county, city, town, or other governmental entity for a negligent act, error, or omission, including alleged violations of civil rights pursuant to 42 U.S.C. 1983, or other actionable conduct of the employee committed while acting within the course and scope of the employee's office or employment, the governmental entity employer, except as provided in subsection (6), shall defend the action on behalf of the employee and indemnify the employee.

(3) Upon receiving service of a summons and complaint in a noncriminal action against him, the employee shall give written notice to his supervisor requesting that a defense to the action be provided by the governmental entity employer. If the employee is an elected state official or other employee having no supervisor, the employee shall give notice of the action to the legal officer or agency of the governmental entity defending the entity in legal actions of that type. Except as provided in subsection (6), the employer shall offer a defense to the action on behalf of the employee. The defense may consist of a defense provided directly by the employer. The employer shall notify the employee, within 15 days after receipt of notice, whether a direct defense will be provided. If the employer refuses or is unable to provide a direct defense, the defendant employee may retain other counsel. Except as provided in subsection (6), the employer shall pay all expenses relating to the retained defense and pay any judgment for damages entered in the action that may be otherwise payable under this section.

(4) In any noncriminal action in which a governmental entity employee is a party defendant, the employee shall be indemnified by the employer for any money judgments or legal expenses, including attorney fees either incurred by the employee or awarded to the claimant, or both, to which the employee may be subject as a result of the suit unless the employee's conduct falls within the exclusions provided in subsection (6).

(5) Recovery against a governmental entity under the provisions of parts 1 through 3 of this chapter constitutes a complete bar to any action or recovery of damages by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act, error, or omission or other actionable conduct gave rise to the claim. In any such action against a governmental entity, the employee whose conduct gave rise to the suit is immune from liability by reasons of the same subject matter if the

governmental entity acknowledges or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of the employee's employment, unless the claim constitutes an exclusion provided in (b) through (d) of subsection (6).

(6) In a noncriminal action in which a governmental entity employee is a party defendant, the employee may not be defended or indemnified by the employer for any money judgments or legal expenses, including attorney fees, to which the employee may be subject as a result of the suit if a judicial determination is made that:

(a) the conduct upon which the claim is based constitutes oppression, fraud, or malice, or for any other reason does not arise out of the course and scope of the employee's employment;

(b) the conduct of the employee constitutes a criminal offense as defined in Title 45, chapters 4 through 7;

(c) the employee compromised or settled the claim without the consent of the government entity employer; or

(d) the employee failed or refused to cooperate reasonably in the defense of the case.

(7) If no judicial determination has been made applying the exclusions provided in subsection (6), the governmental entity employer may determine whether those exclusions apply. However, if there is a dispute as to whether the exclusions of subsection (6) apply and the governmental entity employer concludes it should clarify its obligation to the employee arising under this section by commencing a declaratory judgment action or other legal action, the employer is obligated to provide a defense or assume the cost of the defense of the employee until a final judgment is rendered in such action holding that the employer had no obligation to defend the employee. The governmental entity employer has no obligation to provide a defense to the employee in a declaratory judgment action or other legal action brought against the employee by the employer under this subsection.

History: (1)En. 82-4322.1 by Sec. 1, Ch. 239, L. 1974; Sec. 82-4322.1, R.C.M. 1947; (2) thru (4)En. Sec. 23, Ch. 380, L. 1973; amd. Sec. 2, Ch. 239, L. 1974; Sec. 82-4323, R.C.M. 1947; R.C.M. 1947, 82-4322.1, 82-4323; amd. Sec. 1, Ch. 530, L. 1983.

Cross-References

Damages and costs awarded against government officer to be recovered from governing entity employing officer, 27-26-403.

2-9-306. Construction of policy conditions — customary exclusions. Any insurance policy, rider, or endorsement issued and purchased after July 1, 1973, to insure against any risk which may arise as a result of the application of parts 1 through 3 of this chapter which contains any condition or provision not in compliance with the requirements of parts 1 through 3 shall not be rendered invalid thereby but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with parts 1 through 3, provided the policy is otherwise valid. This section may not be construed to prohibit any such insurance policy, rider, or endorsements from containing standard and customary exclusions of coverages that the department of administration considers reasonable and prudent upon considering the availability and the cost of such insurance coverages.

History: En. Sec. 8, Ch. 380, L. 1973; R.C.M. 1947, 82-4308; amd. Sec. 8, Ch. 184, L. 1979.

2-9-307 through 2-9-310 reserved.

2-9-311. Jurisdiction of district court — rules of procedure. The district court shall have jurisdiction over any action brought under parts 1 through 3 of this chapter, and such actions shall be governed by the Montana Rules of Civil Procedure insofar as they are consistent with such parts.

History: En. Sec. 20, Ch. 380, L. 1973; R.C.M. 1947, 82-4320.

Cross-References

Venue of actions against state, county, and political subdivisions, 25-2-126.

2-9-312. Renumbered 25-2-126(1) and (3) by Code Commissioner, 1985. Sec. 18(2), Ch. 432, L. 1985.

2-9-313. Service of process on state. In all actions against the state arising under this chapter, the state must be named the defendant and the summons and complaint must be served on the director of the department of administration in addition to service required by Rule 4D(2)(h), M.R.Civ.P. The state shall serve an answer within 40 days after service of the summons and complaint.

History: En. Sec. 22, Ch. 380, L. 1973; R.C.M. 1947, 82-4322; amd. Sec. 1, Ch. 604, L. 1979; amd. Sec. 1, Ch. 3, L. 1993.

2-9-314. Court approval of attorney's fee. (1) When an attorney represents or acts on behalf of a claimant or any other party on a tort claim against the state or a political subdivision thereof, the attorney shall file with the claim a copy of the contract of employment showing specifically the terms of the fee arrangement between the attorney and the claimant.

(2) The district court may regulate the amount of the attorney's fee in any tort claim against the state or a political subdivision thereof. In regulating the amount of the fee, the court shall consider the time the attorney was required to spend on the case, the complexity of the case, and any other relevant matter the court may consider appropriate.

(3) Attorneys' fees regulated under this section shall be made a part of the court record and are open to the public.

(4) If an attorney violates a provision of this section, a rule of court adopted under this section, or an order fixing attorney's fees under this section, he forfeits the right to any fee which he may have collected or been entitled to collect.

History: En. 82-4316.1 by Sec. 1, Ch. 188, L. 1977; R.C.M. 1947, 82-4316.1.

2-9-315. Recovery from appropriations if no insurance. In the event no insurance has been procured by the state to pay a claim or judgment arising under the provisions of parts 1 through 3 of this chapter, the claim or judgment shall be paid from the next appropriation of the state instrumentality whose tortious conduct gave rise to the claim.

History: En. Sec. 25, Ch. 380, L. 1973; R.C.M. 1947, 82-4325.

2-9-316. Judgments against governmental entities except state. Except as provided in 15-1-402, a political subdivision of the state shall satisfy a final judgment out of funds that may be available from the following sources:

(1) insurance;

(2) the general fund or any other funds legally available to the governing body;

(3) a property tax, otherwise properly authorized by law, collected by a special levy authorized by law, in an amount necessary to pay any unpaid portion of the judgment, except that such levy may not exceed 10 mills;

(4) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the payment of the judgment liability. The governing body of a county, city, or school district is hereby authorized to issue such bonds pursuant to procedures established by law. Property taxes may be levied to amortize such bonds, provided the levy for payment of any such bonds or judgments may not exceed, in the aggregate, 10 mills annually.

History: En. 82-4335 by Sec. 10, Ch. 360, L. 1977; R.C.M. 1947, 82-4335(1); amd. Sec. 3, Ch. 213, L. 1989.

Cross-References

Authority of county to issue general obligation bonds to satisfy judgments, 7-7-2202.

Municipal general obligation bonds, Title 7, ch. 7, part 42.

School bonds for funding judgment against school district, 20-9-403.

Actions arising from seizure or sale of property for taxes, 27-2-210.

2-9-317. No interest if judgment paid within two years — exception. Except as provided in 18-1-404(1)(b), if a governmental entity pays a judgment within 2 years after the day on which the judgment is entered, no penalty or interest may be assessed against the governmental entity.

History: En. 82-4335 by Sec. 10, Ch. 360, L. 1977; R.C.M. 1947, 82-4335(2); amd. Sec. 2, Ch. 508, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 508 at beginning inserted exception clause; and made minor changes in style. Amendment effective May 1, 1997.

Cross-References

Amount of interest payable on judgments, 25-9-205.

Interest on recovery of damages, 27-1-211 through 27-1-214.

2-9-318. Attachment and execution. No levy of attachment or writ of execution shall issue against any property of a governmental entity for the security or collection of any claim or judgment against any governmental entity under parts 1 through 3 of this chapter.

History: En. Sec. 28, Ch. 380, L. 1973; R.C.M. 1947, 82-4327.

Cross-References

Execution of judgment, Title 25, ch. 13.

Prejudgment attachment, Title 27, ch. 18.

Part 4 reserved

Part 5

General Provisions Related to Official Bonds

2-9-501. Application — state official and employee bonds excepted. The provisions of this part apply to the bonds of county, town, or township officers; the official bond of any executor, administrator, guardian; or the bond or undertaking of any person where by law a bond or undertaking is required except state officers and employees.

History: En. Sec. 1084, Pol. C. 1895; amd. Sec. 7, p. 82, L. 1899; re-en. Sec. 412, Rev. C. 1907; re-en. Sec. 503, R.C.M. 1921; Cal. Pol. C. Sec. 981; amd. Sec. 1, Ch. 17, L. 1935; re-en. Sec. 503, R.C.M. 1935; amd. Sec. 7, Ch. 134, L. 1941; amd. Sec. 8, Ch. 177, L. 1965; R.C.M. 1947, 6-331.

Cross-References

Suretyship — generally, Title 28, ch. 11, part 4; Title 33, ch. 26.

2-9-502. Bonds of deputies. Every officer or body appointing a deputy, clerk, or subordinate officer may require an official bond to be given by the person appointed and may fix the amount thereof.

History: En. Sec. 1088, Pol. C. 1895; re-en. Sec. 416, Rev. C. 1907; re-en. Sec. 507, R.C.M. 1921; Cal. Pol. C. Sec. 985; re-en. Sec. 507, R.C.M. 1935; R.C.M. 1947, 6-335.

2-9-503. Bond of appointee. Any person appointed to fill a vacancy, before entering upon the duties of the office, must give a bond corresponding in substance and form with the bond required of the officer originally elected or appointed, as herein provided.

History: En. Sec. 1074, Pol. C. 1895; re-en. Sec. 402, Rev. C. 1907; re-en. Sec. 493, R.C.M. 1921; Cal. Pol. C. Sec. 971; re-en. Sec. 493, R.C.M. 1935; R.C.M. 1947, 6-324.

2-9-504. Conditions, form, and signatures. (1) The condition of every official bond must be that the principal shall well, truly, and faithfully perform all official duties then required of him by law and also such additional duties as may be imposed on him by any law of the state subsequently enacted and that he will account for and pay over and deliver to the person or officer entitled to receive the same all moneys or other property that may come into his hands as such officer.

(2) The principal and sureties upon any official bond are also in all cases liable for the neglect, default, or misconduct in office of any deputy, clerk, or employee appointed or employed by such principal.

(3) All official bonds must be signed and executed by the principal and two or more sureties or by the principal and one or more surety companies organized as such under the laws of this state or licensed to do business herein.

(4) All official bonds must be in form joint and several and made payable to the state of Montana in such penalty and with such conditions as required by this part or the law creating or regulating the duties of the office.

History: (1) thru (3)En. Sec. 1057, Pol. C. 1895; amd. Sec. 2, p. 79, L. 1899; re-en. Sec. 384, Rev. C. 1907; re-en. Sec. 475, R.C.M. 1921; Cal. Pol. C. Sec. 954; re-en. Sec. 475, R.C.M. 1935; Sec. 6-306, R.C.M. 1947; (4)En. Sec. 1061, Pol. C. 1895; re-en. Sec. 388, Rev. C. 1907; re-en. Sec. 479, R.C.M. 1921; Cal. Pol. C. Sec. 958; re-en. Sec. 479, R.C.M. 1935; Sec. 6-310, R.C.M. 1947; R.C.M. 1947, 6-306, 6-310.

Cross-References

Suretyship — generally, Title 28, ch. 11, part 4; Title 33, ch. 26.

2-9-505. Bonds of receivers, assignees — payable to state. All bonds or undertakings given by trustees, receivers, assignees, or officers of a court in an action or proceeding for the faithful discharge of their duties, where it is not otherwise provided, must be in the name of and payable to the state and, upon the order of the court where such action or proceeding is pending, may be prosecuted for the benefit of any and all interested therein.

History: En. Sec. 1085, Pol. C. 1895; re-en. Sec. 413, Rev. C. 1907; re-en. Sec. 504, R.C.M. 1921; Cal. Pol. C. Sec. 982; re-en. Sec. 504, R.C.M. 1935; R.C.M. 1947, 6-332.

Cross-References

Real parties in interest, Rule 17(a), M.R.Civ.P. (see Title 25, ch. 20).

2-9-506. Approval, filing, record, and custody. (1) The approval of every official bond must be endorsed thereon and signed by the officer approving the same. No officer with whom any official bond is required to be filed must file such bond until approved.

(2) Every official bond must be filed in the proper office within the time prescribed for filing the oath unless otherwise expressly provided by statute.

(3) Official bonds must be recorded in a book kept for the purpose and entitled “Record of Official Bonds”.

(4) Every officer with whom official bonds are filed must carefully keep and preserve the same and give certified copies thereof to any person demanding the same upon being paid the same fees as are allowable by law for certified copies of papers in other cases.

History: (1)Ap. p. Sec. 1055, Pol. C. 1895; re-en. Sec. 382, Rev. C. 1907; re-en. Sec. 473, R.C.M. 1921; Cal. Pol. C. Sec. 952; re-en. Sec. 473, R.C.M. 1935; Sec. 6-304, R.C.M. 1947; Ap. p. Sec. 1056, Pol. C. 1895; re-en. Sec. 383, Rev. C. 1907; re-en. Sec. 474, R.C.M. 1921; Cal. Pol. C. Sec. 953; re-en. Sec. 474, R.C.M. 1935; Sec. 6-305, R.C.M. 1947; (2)En. Sec. 1050, Pol. C. 1895; re-en. Sec. 377, Rev. C. 1907; re-en. Sec. 468, R.C.M. 1921; Cal. Pol. C. Sec. 947; re-en. Sec. 468, R.C.M. 1935; Sec. 6-301, R.C.M. 1947; (3)En. Sec. 1054, Pol. C. 1895; re-en. Sec. 381, Rev. C. 1907; re-en. Sec. 472, R.C.M. 1921; Cal. Pol. C. Sec. 951; re-en. Sec. 472, R.C.M. 1935; Sec. 6-303, R.C.M. 1947; (4)En. Sec. 1060, Pol. C. 1895; re-en. Sec. 387, Rev. C. 1907; re-en. Sec. 478, R.C.M. 1921; Cal. Pol. C. Sec. 957; re-en. Sec. 478, R.C.M. 1935; Sec. 6-309, R.C.M. 1947; R.C.M. 1947, 6-301, 6-303, 6-304, 6-305, 6-309.

2-9-507. Sureties' qualifications. (1) The individual sureties on all official bonds must justify before an officer authorized to administer oaths by an affidavit to the effect that they are residents and householders or freeholders within the state and that each is worth the sum for which he becomes surety in said bond over and above his just debts and liabilities, exclusive of property exempt from execution.

(2) No surety company or corporation organized under or that has complied with the laws of this state and has been duly licensed to do business as such herein shall be required to justify as a surety. No such company or corporation shall be accepted as a surety in any case when its liabilities exceed its assets, as ascertained in the manner provided by law.

(3) No member of the board of county commissioners can be accepted as a surety upon the official bond of any county, township, or school district officer in his county, nor must any county officer become a surety upon the official bond of any other county officer.

History: En. Sec. 1058, Pol. C. 1895; amd. Sec. 3, p. 80, L. 1899; re-en. Sec. 385, Rev. C. 1907; re-en. Sec. 476, R.C.M. 1921; Cal. Pol. C. Sec. 955; re-en. Sec. 476, R.C.M. 1935; R.C.M. 1947, 6-307.

2-9-508 through 2-9-510 reserved.

2-9-511. Extent of sureties' liability — when less than full. (1) Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein for any and all breaches of the conditions thereof committed during the time such officer continues to discharge any of the duties of or hold the office and whether such breaches are committed or suffered by the principal officer, his deputy, or clerk.

(2) Every such bond is in force and obligatory upon the principal and sureties therein for the faithful discharge of all duties which may be required of such officer by any law enacted subsequently to the execution of such bond, and such condition must be expressed therein.

(3) When the penal sum of any bond required to be given amounts to more than $1,000, the sureties may become severally liable for portions not less than $500, making in the aggregate a liability of double the amount named as the penal sum of the bond. If any such bond becomes forfeited, an action may be brought thereon against any or all of the obligors and judgment entered against them, either jointly or severally, as they may be liable. The judgment must not be entered against a surety severally bound for a greater sum than that for which he is specially liable by the terms of the bond. Each surety is liable to contribute to his cosureties in proportion to the amount for which he is liable.

History: (1)En. Sec. 1062, Pol. C. 1895; re-en. Sec. 389, Rev. C. 1907; re-en. Sec. 480, R.C.M. 1921; Cal. Pol. C. Sec. 959; re-en. Sec. 480, R.C.M. 1935; Sec. 6-311, R.C.M. 1947; (2)En. Sec. 1063, Pol. C. 1895; re-en. Sec. 390, Rev. C. 1907; re-en. Sec. 481, R.C.M. 1921; Cal. Pol. C. Sec. 960; re-en. Sec. 481, R.C.M. 1935; Sec. 6-312, R.C.M. 1947; (3)En. Sec. 1059, Pol. C. 1895; amd. Sec. 1, p. 112, L. 1897; amd. Sec. 4, p. 80, L. 1899; re-en. Sec. 386, Rev. C. 1907; re-en. Sec. 477, R.C.M. 1921; Cal. Pol. C. Sec. 956; re-en. Sec. 477, R.C.M. 1935; Sec. 6-308, R.C.M. 1947; R.C.M. 1947, 6-308, 6-311, 6-312.

Cross-References

Extent of surety's liability, 28-11-411.

2-9-512. Defects not to affect liability. (1) Whenever an official bond does not contain the substantial matter or conditions required by law or there are any defects in the approval or filing thereof, it is not void so as to discharge such officer and sureties, but they are equitably bound to the state or party interested and the state or such party may, by action in any court of competent jurisdiction, suggest the defect in the bond, approval, or filing and recover the proper and equitable demand or damages from such officer and the persons who intended to become and were included as sureties in such bond.

(2) No official bond entered into by any officer or any bond, recognizance, or written undertaking taken by any officer in the discharge of the duties of his office shall be void for want of form, substance, recital, or condition or the principal or surety be discharged. The principal and surety shall be bound by such bond, recognizance, or written undertaking to the full extent contemplated by the law requiring the same and the sureties to the amount specified in the bond or recognizance or written undertaking. In all actions on a defective bond, recognizance, or written undertaking, the plaintiff or relator may suggest the defect in his complaint and recover to the same extent as if such bond, recognizance, or written undertaking were perfect in all respects.

History: (1)En. Sec. 1066, Pol. C. 1895; re-en. Sec. 393, Rev. C. 1907; re-en. Sec. 484, R.C.M. 1921; Cal. Pol. C. Sec. 963; re-en. Sec. 484, R.C.M. 1935; Sec. 6-315, R.C.M. 1947; (2)En. Sec. 1, Ch. 193, L. 1907; re-en. Sec. 394, Rev. C. 1907; re-en. Sec. 485, R.C.M. 1921; re-en. Sec. 485, R.C.M. 1935; Sec. 6-316, R.C.M. 1947; R.C.M. 1947, 6-315, 6-316.

Cross-References

Parties to action — joinder, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).

2-9-513. Insufficiency of sureties — action to vacate office. (1) Whenever it is shown by the affidavit of a credible witness or otherwise comes to the knowledge of the court, judge, board, person, or body whose duty it is to approve the official bond of any officer that the sureties on any bond given pursuant to the provisions of this part or any one of them have, since such bond was approved, died, removed from the state, become insolvent, or from any other cause have become incompetent or insufficient sureties on such bond, the court, judge, board, officer, or other person may issue a citation to such officer requiring him on a day therein named, not less than 5 or more than 10 days after date, to appear and show cause why such office should not be vacated, which citation must be served and return thereof made as in other cases.

(2) If the officer fails to appear and show good cause why such office should not be vacated on the day named or fails to give ample additional security, the court, judge, board, officer, or other person must make an order vacating the office. The same must be filled as approved by law.

History: En. Sec. 1067; Pol. C. 1895; amd. Sec. 5, p. 81, L. 1899; re-en. Sec. 395, Rev. C. 1907; re-en. Sec. 486, R.C.M. 1921. Cal. Pol. C. Sec. 964; re-en. Sec. 486, R.C.M. 1935; R.C.M. 1947, 6-317.

Cross-References

State vacancies in office, 2-16-501.

County vacancies in office, 7-4-2106, 7-4-2206.

Municipal vacancies in office, 7-4-4112.

2-9-514. Additional security. (1) The additional bond given pursuant to 2-9-513(2) must be in such penalty as directed by the court, judge, board, officer, or other person and in all other respects similar to the original bond and approved by and filed with the same officer as required in case of the approval and filing of the original bond.

(2) Every such additional bond so filed and approved is of like force and obligation upon the principal and sureties therein, from the time of its execution, and subjects the officer and his sureties to the same liabilities, suits, and actions as are prescribed respecting the original bonds of officers.

(3) In no case is the original bond discharged or affected when an additional bond has been given, but the same remains of like force and obligation as if such additional bond had not been given.

History: (1), (2)En. Sec. 1068, Pol. C. 1895; re-en. Sec. 396, Rev. C. 1907; re-en. Sec. 487, R.C.M. 1921; Cal. Pol. C. Sec. 965; re-en. Sec. 487, R.C.M. 1935; Sec. 6-318, R.C.M. 1947; (3)En. Sec. 1069, Pol. C. 1895; re-en. Sec. 397, Rev. C. 1907; re-en. Sec. 488, R.C.M. 1921; Cal. Pol. C. Sec. 966; re-en. Sec. 488, R.C.M. 1935; Sec. 6-319, R.C.M. 1947; R.C.M. 1947, 6-318, 6-319; amd. Sec. 9, Ch. 184, L. 1979.

2-9-515. Additional security — liability of officers and sureties. The officer and his sureties are liable to any party injured by the breach of any condition of an official bond, after the execution of the additional bond, upon either or both bonds. Such party may bring his action upon either bond, or he may bring separate actions on the bonds respectively. He may allege the same cause of action and recover judgment therefor in each suit.

History: En. Sec. 1070, Pol. C. 1895; re-en. Sec. 398, Rev. C. 1907; re-en. Sec. 489, R.C.M. 1921; Cal. Pol. C. Sec. 967; re-en. Sec. 489, R.C.M. 1935; R.C.M. 1947, 6-320.

2-9-516. Separate judgments. If separate judgments are recovered on the bonds by such party for the same cause of action, he is entitled to have execution issued on such judgments respectively but he must only collect, by execution or otherwise, the amount actually adjudged to him on the same causes of action in one of the suits, together with the costs of both suits.

History: En. Sec. 1071, Pol. C. 1895; re-en. Sec. 399, Rev. C. 1907; re-en. Sec. 490, R.C.M. 1921; Cal. Pol. C. Sec. 968; re-en. Sec. 490, R.C.M. 1935; R.C.M. 1947, 6-321.

2-9-517. Contribution between sureties. Whenever the sureties on either bond have been compelled to pay any sum of money on account of the principal obligor therein, they are entitled to recover in any court of competent jurisdiction of the sureties on the remaining bond a distributive part of the sum thus paid in the proportion which the penalties of such bonds bear one to the other and to the sums thus paid, respectively.

History: En. Sec. 1072, Pol. C. 1895; re-en. Sec. 400, Rev. C. 1907; re-en. Sec. 491, R.C.M. 1921; Cal. Pol. C. Sec. 969; re-en. Sec. 491, R.C.M. 1935; R.C.M. 1947, 6-322.

2-9-518 through 2-9-520 reserved.

2-9-521. Discharge of sureties. Whenever any sureties on the official bond of any officer wish to be discharged from their liability, they and such officer may procure the same to be done if such officer will execute a new bond in accordance with the provisions of this part in like form, penalty, and conditions, and to be approved and filed as the original bond. Upon the filing and approval of the new bond, such first sureties are exonerated from all further liability, but their bond remains in full force as to all liabilities incurred previous to the approval of such new bond. The liability of the principal and surety or sureties in such new bond is in all respects the same and may be enforced in like manner as the liability of the principal and sureties of the original bond.

History: En. Sec. 1073, Pol. C. 1895; amd. Sec. 6, p. 81, L. 1899; re-en. Sec. 401, Rev. C. 1907; re-en. Sec. 492, R.C.M. 1921; Cal. Pol. C. Sec. 970; re-en. Sec. 492, R.C.M. 1935; R.C.M. 1947; 6-323.

2-9-522. Release of sureties. Any surety on the official bond of any county, city, town, or township officer or on the official bond of any executor, administrator, guardian or on the bond or undertaking of any person where by law a bond or undertaking is required may be released from all liability thereon accruing from and after proper proceedings had therefor, as provided in this part.

History: En. Sec. 1075, Pol. C. 1895; re-en. Sec. 403, Rev. C. 1907; re-en. Sec. 494, R.C.M. 1921; Cal. Pol. C. Sec. 972; re-en. Sec. 494, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1941; amd. Sec. 6, Ch. 177, L. 1965; R.C.M. 1947, 6-325.

2-9-523. Proceedings to obtain release. (1) Any surety desiring to be released from liability on the bond of any county or township officer shall file a statement in writing, duly subscribed by himself or someone in his behalf setting forth the name and office of the person for whom he is surety, the amount for which he is liable as such, and his desire to be released from further liability on account thereof.

(2) A notice containing the object of such statement shall be served personally on the principal unless he shall have left the state or his whereabouts cannot after due and diligent search and inquiry be ascertained, in which case the same may be served by publication once a week for four successive

publications in some newspaper of general circulation published in the county where the bond is filed on record. The statement, except when the county clerk or county commissioners are principals, shall be filed with the county clerk. When the county clerk or county commissioners are principals, the statement shall be filed with the district judge.

(3) Any surety desiring to be released from liability on the bond of any city or town officer shall file and serve a similar statement with the city or town clerk or mayor.

(4) Any surety desiring to be released from an executor's, administrator's, or guardian's bond or undertaking shall file and serve a similar statement with the proper officer, person, or authority where the bond is filed on record.

(5) All statements provided for in this section must be served personally on the principal as in this section provided if he can be found for service in the state; if not, he may be served by publication in a newspaper at the county seat as hereinbefore provided, or if no newspaper be published thereat, then in an adjoining county, without any order from any court or other authority. In all cases for which publication is provided, a printed or written notice posted in at least 10 conspicuous places in the county for the time specified for publication of said notice shall be deemed legal notice thereof.

History: En. Sec. 2, Ch. 134, L. 1941; amd. Sec. 7, Ch. 177, L. 1965; R.C.M. 1947, 6-326.

2-9-524. Amount of new bond — failure to file. (1) Whenever a statement is filed or filed and served as herein provided, the proper authority shall prescribe the penalty or amount in which a new or additional bond or undertaking shall be filed unless already provided by statute. If no such order be made, then such new or additional bond or undertaking shall be executed for the same amount as the original.

(2) If any officer or person shall fail to file within 20 days from the date of personal service or within 40 days from the date of the first publication or of posting notice, as provided herein, a new or additional bond or undertaking, the office or appointment of the person or officer so failing shall become vacant and such officer or person shall forfeit his office or appointment. The same shall be filled as in other cases of vacancy and in the manner provided by law.

(3) The person applying to be released from liability on such bond or undertaking shall not be holden or liable thereon after the date herein provided for the vacating and forfeiting of such office or appointment.

History: En. Secs. 3, 5, Ch. 134, L. 1941; R.C.M. 1947, 6-327, 6-329.

2-9-525. Liability of sureties when new bond is given. In case a new or additional undertaking be filed, the sureties on the original undertaking not asking to be released and on the new or additional bond or undertaking shall be and continue liable for the official acts of such officer or person, jointly and severally, the same as if all were sureties on one and the same instrument. This shall not be deemed to provide retroactive liability on the new surety.

History: En. Sec. 4, Ch. 134, L. 1941; R.C.M. 1947, 6-328.

2-9-526. Effect of discharge of sureties. No surety must be released from damages or liabilities for acts, omissions, or causes existing or which arose before discharge of the surety as hereinbefore provided, but such legal proceedings may be had therefor in all respects as though no such discharge had been had.

History: En. Sec. 1083, Pol. C. 1895; re-en. Sec. 411, Rev. C. 1907; re-en. Sec. 502, R.C.M. 1921; Cal. Pol. C. Sec. 980; re-en. Sec. 502, R.C.M. 1935; amd. Sec. 6, Ch. 134, L. 1941; R.C.M. 1947, 6-330.

2-9-527. Suit on bonds. (1) Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein to and for the state and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of such officer in his official capacity. Any person so injured or aggrieved may bring suit on such bond, in his own name, without an assignment thereof.

(2) No such bond is void on the first recovery of a judgment thereon. Suit may be afterwards brought, from time to time, and judgment recovered thereon by the state or by any person to whom a right of action has accrued against such officer and his sureties until the whole penalty of the bond is exhausted.

History: (1)En. Sec. 1064, Pol. C. 1895; re-en. Sec. 391, Rev. C. 1907; re-en. Sec. 482, R.C.M. 1921; Cal. Pol. C. Sec. 961; re-en. Sec. 482, R.C.M. 1935; Sec. 6-313, R.C.M. 1947; (2)En. Sec. 1065, Pol. C. 1895; re-en. Sec. 392, Rev. C. 1907; re-en. Sec. 483, R.C.M. 1921; Cal. Pol. C. Sec. 962; re-en. Sec. 483, R.C.M. 1935; Sec. 6-314, R.C.M. 1947; R.C.M. 1947, 6-313, 6-314.

2-9-528. Lien on real estate of surety — action to compel specific performance. (1) When an action is commenced in any court in this state, for the benefit to the state, to enforce the penalty of or to recover money upon an official bond or obligation or any bond or obligation executed in favor of the state of Montana or of the people of this state, the attorney or other person prosecuting the action may file with the clerk of the court in which the action is commenced an affidavit stating either positively or on information and belief that such bond or obligation was executed by the defendant or one or more of the defendants (designating whom) and made payable to the people of the state or to the state and that the defendant or defendants have real estate or some interest in lands (designating the county or counties in which the same is situated) and that the action is prosecuted for the benefit of the state. The clerk of the court receiving such affidavit must certify to the county clerk in which such real estate is situated the names of the parties to the action, the name of the court in which the action is pending, and the amount claimed in the complaint, with the date of the commencement of the suit.

(2) Upon receiving such certificate, the county clerk must endorse upon it the time of its reception. Such certificate must be filed in the same manner as notices of the pendency of action affecting real estate. Any judgment recovered in such action is a lien upon all real estate belonging to the defendant situated in any county in which such certificate is so filed or to one or more of such defendants, for the amount the owner thereof is or may be liable upon the judgment, from the filing of this certificate.

(3) In any action to compel the specific performance of an agreement to sell real estate affected by the lien created by the filing of the certificate mentioned in subsection (2) which agreement was made prior to the filing of such certificate, but the purchase price thereof is not due until after the filing of said certificate, the judge of the district court in which said action for specific performance is tried must, if the purchaser is otherwise entitled to specific performance of such agreement, order the said purchaser to pay the purchase price, or so much thereof as may be due, to the state treasurer, taking his receipt

therefor. Upon such payment, the purchaser is entitled to enforce the specific performance of the agreement and take said real estate free from the liens created by the filing of said certificate. The moneys so paid to the state treasurer must be held by him, pending the litigation mentioned in said certificate and subject to the lien created by the filing of said certificate. If judgment is recovered against the defendant, the state treasurer in his settlement must pay to the county treasurer entitled to the same the amount due the county.

History: (1)En. Sec. 1086, Pol. C. 1895; re-en. Sec. 414, Rev. C. 1907; re-en. Sec. 505, R.C.M. 1921; Cal. Pol. C. Sec. 983; re-en. Sec. 505, R.C.M. 1935; Sec. 6-333, R.C.M. 1947; (2)En. Sec. 1087, Pol. C. 1895; re-en. Sec. 415, Rev. C. 1907; re-en. Sec. 506, R.C.M. 1921; Cal. Pol. C. Sec. 984; re-en. Sec. 506, R.C.M. 1935; Sec. 6-334, R.C.M. 1947; (3)En. Sec. 1090, Pol. C. 1895; re-en. Sec. 418, Rev. C. 1907; re-en. Sec. 509, R.C.M. 1921; Cal. Pol. C. Sec. 987; re-en. Sec. 509, R.C.M. 1935; Sec. 6-337, R.C.M. 1947; R.C.M. 1947, 6-333, 6-334, 6-337.

Cross-References

Judgment liens, 25-9-301.

Part 6

Bonds of State Officers and Employees

Part Cross-References

Guaranty, indemnity, and suretyship, Title 28, ch. 11.

Suretyship, Title 33, ch. 26.

2-9-601. Definition. As used in this part, the term "state officers and employees" does not include notaries public, supreme court justices, district court judges, or members and employees of the legislature.

History: En. Sec. 1, Ch. 177, L. 1965; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 6-105(part).

2-9-602. Officers and employees to be bonded — coverage, form, amount. (1) All state officers and employees shall be bonded.

(2) A bond may cover an individual officer or employee or group of officers and employees. The form of all bonds shall be prescribed by the department of administration, subject to the approval of the attorney general.

(3) Before determining the amount for which a state officer or employee shall be bonded, the department of administration shall consult with the head of the institution or agency involved and the head of the agency responsible for the examination or post auditing of state agencies. The amount for which a state officer or employee shall be bonded shall be based on the amount of money or property handled and the opportunity for defalcation.

History: (1), (2)En. Sec. 1, Ch. 177, L. 1965; amd. Sec. 98, Ch. 326, L. 1974; Sec. 6-105, R.C.M. 1947; (3)En. Sec. 2, Ch. 177, L. 1965; amd. Sec. 1, Ch. 326, L. 1974; Sec. 6-106, R.C.M. 1947; R.C.M. 1947, 6-105(part), 6-106(part).

2-9-603. Purchase. (1) The department of administration shall purchase all surety bonds for state officers and employees.

(2) All bonds shall be purchased by competitive bid.

(3) Bonds purchased by the department of administration shall be executed by responsible insurance or surety companies admitted and authorized to execute surety bonds in this state.

History: (1)En. Sec. 1, Ch. 177, L. 1965; amd. Sec. 98, Ch. 326, L. 1974; Sec. 6-105, R.C.M. 1947; (2)En. Sec. 2, Ch. 177, L. 1965; amd. Sec. 1, Ch. 326, L. 1974; Sec. 6-106,

R.C.M. 1947; (3)En. Sec. 3, Ch. 177, L. 1965; amd. Sec. 98, Ch. 326, L. 1974; Sec. 6-107, R.C.M. 1947; R.C.M. 1947, 6-105(part), 6-106(part), 6-107.

2-9-604. Proration of bond premiums. (1) The department of administration shall prorate the premiums for bonds covering more than one state agency or institution among the state agencies and institutions whose officers and employees are covered. Such proration shall be based on the risk of bonding the officers and employees of each agency or institution.

(2) The department of administration shall order payment of the prorated amount from moneys which are available to such agencies or institutions for the payment of general administrative expenses.

History: En. Sec. 4, Ch. 177, L. 1965; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 6-108.

Part 7

Bonds of County Officers and Employees

2-9-701. County officers and employees to be bonded — form — conditions of group bonds. (1) All elected and appointed county officers and employees shall be bonded.

(2) The form of bonds for county officers and employees must be approved by the county attorney and filed and recorded in the office of the county clerk and recorder.

(3) A bond may cover an individual officer or employee, or a blanket bond may cover all officers and employees or any group or combination of county officers and employees.

(4) All official bonds covering a group of county officers or employees shall be made upon the same conditions as are required of a principal under subsections (1) through (3) of 2-9-504, except that the bond need not be signed by each officer or employee.

History: En. Secs. 1, 2, 6, 7, Ch. 68, L. 1967; R.C.M. 1947, 6-203(part), 6-204(part), 6-208, 6-209.

2-9-702. Amount. The amount for which a county officer or employee must be bonded must be based on the amount of money or property handled and the opportunity for defalcation.

History: (1)En. Sec. 2, Ch. 68, L. 1967; Sec. 6-204, R.C.M. 1947; (2)En. Sec. 3, Ch. 68, L. 1967; amd. Sec. 46, Ch. 348, L. 1974; amd. Sec. 7, Ch. 213, L. 1975; Sec. 6-205, R.C.M. 1947; R.C.M. 1947, 6-204(part), 6-205; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 3, Ch. 179, L. 1995.

2-9-703. Purchase. (1) The board of county commissioners shall purchase all surety bonds for county officers and employees.

(2) The board of county commissioners shall actively solicit offers on a competitive basis from available qualified insurance or surety companies before purchasing the bonds.

(3) Bonds purchased by the board of county commissioners shall be executed by responsible insurance or surety companies authorized and admitted to execute surety bonds in this state.

History: En. Secs. 1, 2, 4, Ch. 68, L. 1967; R.C.M. 1947, 6-203(part), 6-204(part), 6-206.

2-9-704. Premiums charged against budgets. The premiums for all surety company bonds shall be a proper charge against the budgets of the county general fund or against the budget or budgets of those county funds where the officer or employee renders service.

History: En. Sec. 5, Ch. 68, L. 1967; R.C.M. 1947, 6-207.

2-9-705 through 2-9-710 reserved.

2-9-711. Actions against a sheriff for official acts. If an action be brought against a sheriff for an act done by virtue of his office and he give written notice thereof to the sureties on any bond of indemnity received by him, the judgment recovered therein shall be conclusive evidence of his right to recover against such sureties. The court may, on motion, upon notice of 5 days, order judgment to be entered up against them for the amount so recovered, including costs.

History: En. Sec. 431, p. 130, Bannack Stat.; re-en. Sec. 591, p. 156, Cod. Stat. 1871; re-en. Sec. 516, p. 176, L. 1877; re-en. Sec. 516, 1st Div. Rev. Stat. 1879; re-en. Sec. 533, 1st Div. Comp. Stat. 1887; amd. Sec. 1898, C. Civ. Proc. 1895; re-en. Sec. 7191, Rev. C. 1907; re-en. Sec. 9824, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1055; re-en. Sec. 9824, R.C.M. 1935; R.C.M. 1947, 93-8709.

Part 8

Bonds of City Officers and Employees

2-9-801. Application to commission and commission-manager forms of government. This part applies to the bonding of all elected or appointed officers and employees under the commission form of city government and to the commission-manager form of city government.

History: En. Sec. 8, Ch. 67, L. 1967; R.C.M. 1947, 6-608.

2-9-802. Bonds — amount. All elected or appointed city or town officers and employees must be bonded in the amount required by ordinance. The amount for which a city or town officer or employee must be bonded must be based on the amount of money or property handled and the opportunity for defalcation.

History: (1)En. Sec. 2, Ch. 67, L. 1967; Sec. 6-602, R.C.M. 1947; (2)En. Sec. 3, Ch. 67, L. 1967; amd. Sec. 47, Ch. 348, L. 1974; amd. Sec. 8, Ch. 213, L. 1975; Sec. 6-603, R.C.M. 1947; R.C.M. 1947, 6-602(part), 6-603; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 4, Ch. 179, L. 1995.

2-9-803. Form — coverage — approval. (1) A bond may cover an individual officer or employee or a blanket bond may cover all officers and employees or any group or combination of officers and employees.

(2) All official bonds covering a group of city or town officers or employees shall be made upon the same conditions as are required of a principal under subsections (1) through (3) of 2-9-504, except that the bond need not be signed by each officer and employee.

(3) The form of bonds for city or town officers and employees must be approved by the city or town attorney and filed and recorded in the office of the city or town clerk.

History: En. Secs. 1, 5, 6, Ch. 67, L. 1967; R.C.M. 1947, 6-601(part), 6-605, 6-606.

2-9-804. Purchase — responsible surety. (1) The city or town council or commissioners shall purchase all surety bonds for city officers and employees.

(2) The city or town council or commission shall actively solicit offers on a competitive bases from available qualified insurance or surety companies before purchasing the bonds.

(3) Bonds purchased by the city or town council or commission shall be executed by responsible insurance or surety companies authorized and admitted to execute surety bonds in this state.

History: En. Secs. 1, 2, 4, Ch. 67, L. 1967; R.C.M. 1947, 6-601(part), 6-602(part), 6-604.

2-9-805. Premiums — charge against budget. The premiums for all surety company bonds shall be a proper charge against the budget or budgets of the city or town general fund or against the budget or budgets of those city or town funds where the officer or employee renders service.

History: En. Sec. 7, Ch. 67, L. 1967; R.C.M. 1947, 6-607.

CHAPTER 10

STATE AGENCY ACTIONS AFFECTING PRIVATE PROPERTY

Part 1 — Private Property Assessment Act

2-10-101. Short title.
2-10-102. Purpose.
2-10-103. Definitions.
2-10-104. Guidelines for actions with taking implications.
2-10-105. Impact assessment.

Part 1

Private Property Assessment Act

Part Cross-References

Due process of law, Art. II, sec. 17, Mont. Const.

Eminent domain, Art. II, sec. 29, Mont. Const.

Eminent domain generally, Title 70, ch. 30, part 1.

2-10-101. Short title. This part may be cited as the "Private Property Assessment Act".

History: En. Sec. 1, Ch. 462, L. 1995.

2-10-102. Purpose. It is the policy of this state that a person may not be deprived of the use of private property without due process of law and that private property may not be taken or damaged by a state agency without prior just compensation to the owner in accordance with the meaning ascribed to these concepts by the United States supreme court and the Montana supreme court. An assessment of each state agency action with taking or damaging implications is needed to avoid imposing expensive litigation burdens on citizens and to minimize the risk of unanticipated demands on the state's fiscal resources. The purpose of this part is to establish an orderly and consistent process that better enables state agencies to evaluate whether an action with taking or damaging implications might result in the taking or damaging of private property. It is not the purpose of this part to expand or diminish the private property protections provided in the federal and state constitutions.

History: En. Sec. 2, Ch. 462, L. 1995.

2-10-103. Definitions. As used in this part, the following definitions apply:

(1) "Action with taking or damaging implications" means a proposed state agency administrative rule, policy, or permit condition or denial pertaining to land or water management or to some other environmental matter that if adopted and enforced would constitute a deprivation of private property in violation of the United States or Montana constitution. It does not include:

(a) proposed eminent domain proceedings;

(b) a proposed seizure of property by law enforcement officials as evidence or under a state forfeiture statute;

(c) a proposed forfeiture of property during or as a result of criminal proceedings; or

(d) a proposal to repeal a rule, discontinue a government program, or implement a proposed change that has the effect of reducing regulation of private property.

(2) "Private property" means all real property, including but not limited to water rights.

(3) "State agency" means an officer, board, commission, department, or other entity within the executive branch of state government.

(4) "Taking or damaging" means depriving a property owner of private property in a manner requiring compensation under the 5th and 14th amendments to the constitution of the United States or Article II, section 29, of the Montana constitution.

History: En. Sec. 3, Ch. 462, L. 1995.

2-10-104. Guidelines for actions with taking implications. (1) The attorney general shall develop and provide to state agencies guidelines, including a checklist, to assist the agencies in identifying and evaluating agency actions with taking or damaging implications. The attorney general shall at least annually review the guidelines and modify them as necessary to comply with changes in statutes and court decisions.

(2) In developing guidelines, the attorney general shall include a provision that state agencies should consider and follow obligations imposed by the 5th and 14th amendments to the Constitution of the United States and Article II, section 29, of the Montana constitution, as construed by the United States supreme court and the Montana supreme court, when considering and implementing an action with taking or damaging implications in order to avoid unanticipated and undue burdens on the state treasury.

History: En. Sec. 4, Ch. 462, L. 1995.

2-10-105. Impact assessment. (1) Each state agency shall assign a qualified person or persons in the state agency the duty and authority to ensure that the state agency complies with this part. Each state agency action with taking or damaging implications must be submitted to that person or persons for review and completion of an impact assessment. The state agency may not take the action unless the review and impact assessment have been completed, except that the action with taking or damaging implications may be taken before the review and impact assessment are completed if necessary to avoid an immediate threat to public health or safety.

(2) Using the attorney general's guidelines and checklist, the person shall prepare a taking or damaging impact assessment for each state agency action with taking or damaging implications that includes an analysis of at least the following:

(a) the likelihood that a state or federal court would hold that the action is a taking or damaging;

(b) alternatives to the action that would fulfill the agency's statutory obligations and at the same time reduce the risk for a taking or damaging; and

(c) the estimated cost of any financial compensation by the state agency to one or more persons that might be caused by the action and the source for payment of the compensation.

(3) A copy of the impact assessment for a proposed action with taking or damaging implications must be given to the governor before the action is taken, except that an action to avoid an immediate threat to public health or safety may be taken before the impact assessment is completed and the assessment may be reported to the governor after the action is taken.

History: En. Sec. 5, Ch. 462, L. 1995.

CHAPTER 11

LEGAL AUTHORITY FOR GOVERNMENT ACTION

Part 1 — Government Accountability Act

2-11-101. Short title.
2-11-102. Findings and purpose.
2-11-103. Definitions.
2-11-104. Statement of government authority required.

Chapter Cross-References

Public participation in governmental operations, Title 2, ch. 3.

Part 1

Government Accountability Act

Part Compiler's Comments

Applicability: Section 5, Ch. 502, L. 1997, provided: "[This act] [2-11-101 through 2-11-104] applies to a government act as defined by [section 3] [2-11-103] taken after [the effective date of this act]." Effective May 2, 1997.

Effective Date: Section 6, Ch. 502, L. 1997, provided: "[This act] [2-11-101 through 2-11-104] is effective on passage and approval." Approved May 2, 1997.

2-11-101. Short title. This part may be cited as the "Government Accountability Act".

History: En. Sec. 1, Ch. 502, L. 1997.

2-11-102. Findings and purpose. The purpose of this part is to require government entities to make known the legal authority upon which certain action is based. The benefits of this requirement will be that government officials will articulate and reaffirm their legal authority to act and that both the government and the people will have a fuller understanding of the limits of the law and the facts to which the law applies. This understanding will benefit both government and the people by helping to resolve disputes between government servants and the people, without lengthy and costly litigation, by instilling trust in government, and by helping to identify deficiencies in the law so that those deficiencies may be addressed by legislative action.

History: **En. Sec. 2, Ch. 502, L. 1997.**

2-11-103. Definitions. As used in this part, the following definitions apply:

(1) "Aggrieved" means that a person can demonstrate a specific personal and legal interest, as distinguished from a general interest, that has been adversely affected.

(2) (a) "Government act" means the denial or issuance with conditions of a permit, certificate, license, or the equivalent of a permit, certificate, or license issued by a government entity.

(b) The term does not mean:

(i) litigation in which a government entity or other person litigates the authority of the government entity to take an act provided in subsection (2)(a);

(ii) an act provided in subsection (2)(a) for which a citation or warning is issued, other than the statement required by 2-11-104, on which a reference clearly appears to the legal authority for the government action; or

(iii) a legislative act by the state of Montana.

(3) "Government entity" means a state agency or a local government unit.

(4) "Local government unit" means a city, county, town, unincorporated municipality or village, or special taxing unit or district and any commission, board, bureau, or other office of the unit.

(5) "Rule" has the meaning provided in 2-4-102.

(6) "State agency" has the meaning provided in 2-4-102(2)(a).

(7) "Statement of government authority" or "statement" means the statement required by 2-11-104.

History: **En. Sec. 3, Ch. 502, L. 1997.**

2-11-104. Statement of government authority required. (1) When a government entity takes a government act, as defined in 2-11-103, it shall provide upon request to the applicant a written statement of legal authority upon which the action is based. The statement must be provided within 30 days of the government act.

(2) The statement must clearly cite the statute, rule, ordinance, resolution, or other legal authority for the government act.

History: **En. Sec. 4, Ch. 502, L. 1997.**

CHAPTERS 12 THROUGH 14

RESERVED

CHAPTER 15

EXECUTIVE BRANCH OFFICERS AND AGENCIES

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2-15-101. Declaration of policy and purpose.
2-15-102. Definitions.
2-15-103. Policymaking authority and administrative powers of governor.
2-15-104. Structure of executive branch.
2-15-105. Attorney general, state auditor, superintendent of public instruction, and secretary of state — powers as department heads.
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2-15-108. Gender and racial balance — report to legislature.
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2-15-1009. Public employees' retirement board — terms — allocation.
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2-15-1011. State agency for surplus property.
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2-15-1014. Renumbered 2-15-1707 by Code Commissioner, 1991.
2-15-1015. State tax appeal board.
2-15-1016. State employee group benefits advisory council — composition.
2-15-1017. Publishing policy committee.
2-15-1018. Renumbered 2-15-1514(2) by Code Commissioner, 1985.
2-15-1019. Board of directors of state compensation insurance fund.
2-15-1020. Appellate defender commission — duties — rules.

Part 11 — Department of Community Affairs (Abolished. Sec. 6, Ch. 274, L. 1981)

2-15-1101. Repealed.
2-15-1102. Renumbered 2-15-1811.
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2-15-1105 through 2-15-1110 reserved.
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2-15-1516. Fertilizer advisory committee.
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2-15-1519. Fire services training advisory council.
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2-15-1605. Renumbered 2-15-1841.
2-15-1606. Renumbered 2-15-1842.
2-15-1607. Repealed.
2-15-1608. Repealed.
2-15-1609. Renumbered 2-15-1843.
2-15-1610. Renumbered 2-15-1844.

2-15-1611. Renumbered 2-15-1845.
2-15-1612. Renumbered 2-15-1846.
2-15-1613. Renumbered 2-15-1847.
2-15-1614. Renumbered 2-15-1848.
2-15-1615. Renumbered 2-15-1849.
2-15-1616. Renumbered 2-15-1850.
2-15-1617. Renumbered 2-15-1851.
2-15-1618. Renumbered 2-15-1852.
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2-15-1620 through 2-15-1624 reserved.
2-15-1625. Renumbered 2-15-1856.
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2-15-1627. Repealed.
2-15-1628. Renumbered 2-15-1858.
2-15-1629 and 2-15-1630 reserved.
2-15-1631. Renumbered 2-15-1861.
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2-15-1641. Renumbered 2-15-1866.
2-15-1642. Repealed.
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2-15-1805. Repealed.
2-15-1806. Repealed.
2-15-1807. Repealed.
2-15-1808. Board of investments — allocation — composition — quasi-judicial.
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2-15-1812. Renumbered 2-15-2506.
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2-15-1814. Board of housing — allocation — composition — quasi-judicial.
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2-15-1816. Tourism advisory council.
2-15-1817. Renumbered 2-15-3015 by Code Commissioner, 1989.
2-15-1818. Montana board of science and technology development — allocation — composition — quasi-judicial powers.
2-15-1819 and 2-15-1820 reserved.
2-15-1821. Coal board — allocation — composition.
2-15-1822. Hard-rock mining impact board.
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2-15-1840. Alternative health care board — composition — terms — allocation.
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2-15-1842. Board of dentistry.
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2-15-1846. Board of optometry.
2-15-1847. Board of chiropractors.
2-15-1848. Board of radiologic technologists.
2-15-1849. Board of speech-language pathologists and audiologists.
2-15-1850. Board of hearing aid dispensers.
2-15-1851. Board of psychologists.
2-15-1852. Board of veterinary medicine.
2-15-1853. Board of funeral service.
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2-15-1855. Repealed.
2-15-1856. Board of barbers.
2-15-1857. Board of cosmetologists.
2-15-1858. Board of physical therapy examiners.
2-15-1859. Board of occupational therapy practice.
2-15-1860. Board of respiratory care practitioners.
2-15-1861. Board of sanitarians.
2-15-1862. Renumbered 2-15-3307 by Code Commissioner, 1985.
2-15-1863. Board — composition — allocation — quasi-judicial — compensation.
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2-15-1871. Board of architects.
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2-15-1874. State electrical board.
2-15-1875. Board of plumbers.
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2-15-1881. Board of horseracing.
2-15-1882. Board of athletics.
2-15-1883. Board of outfitters.
2-15-1884 through 2-15-1890 reserved.
2-15-1891. Board of private security patrol officers and investigators.
2-15-1892 through 2-15-1895 reserved.
2-15-1896. Repealed.

Part 19 — Insurance and Investment

2-15-1901. Office of securities commissioner.
2-15-1902. Insurance department.
2-15-1903. Commissioner of insurance designated.

Part 20 — Department of Justice

2-15-2001. Department of justice — head.

2-15-2002. Repealed.
2-15-2003. Repealed.
2-15-2004. Repealed.
2-15-2005. State fire prevention and investigation program — advisory council.
2-15-2006. Board of crime control — composition — allocation.
2-15-2007. Highway traffic safety program.
2-15-2008 through 2-15-2010 reserved.
2-15-2011. Repealed.
2-15-2012 through 2-15-2014 reserved.
2-15-2015. Workers' compensation fraud office.
2-15-2016 through 2-15-2020 reserved.
2-15-2021. Gaming advisory council — allocation — composition — compensation — biennial report.

Part 21 — Environmental Advisory Boards

2-15-2101. Repealed.
2-15-2102. Repealed.
2-15-2103. Repealed.
2-15-2104. Repealed.
2-15-2105. Water and wastewater operators' advisory council.
2-15-2106. Air pollution control advisory council.
2-15-2107. Water pollution control advisory council.
2-15-2108. Petroleum tank release compensation board.
2-15-2109. Renumbered 2-15-2213.
2-15-2110. Small business compliance assistance advisory council.

Part 22 — Department of Public Health and Human Services

2-15-2201. Department of public health and human services — head.
2-15-2202. Renumbered 2-15-1205.
2-15-2203. Board of public assistance — allocation — quasi-judicial.
2-15-2204. Developmental disabilities planning and advisory council.
2-15-2205. Division of visual services.
2-15-2206. Office of aging.
2-15-2207 through 2-15-2209 reserved.
2-15-2210. Repealed.
2-15-2211. Renumbered 2-15-2402.
2-15-2212. Committee on telecommunications access services for persons with disabilities — composition — allocation.
2-15-2213. Repealed.
2-15-2214. Montana children's trust fund board.
2-15-2215. Repealed.
2-15-2216. Trauma care committee.

Part 23 — Department of Corrections

2-15-2301. Department of corrections — head.
2-15-2302. Board of pardons and parole — composition — allocation — quasi-judicial.
2-15-2303. Repealed.
2-15-2304. Repealed.

Part 24 — Department of Family Services (Renumbered and Repealed)

Part 25 — Department of Transportation

2-15-2501. Department of transportation — head.
2-15-2502. Transportation commission.
2-15-2503 and 2-15-2504 reserved.
2-15-2505. Purpose.
2-15-2506. Board of aeronautics — qualification — allocation — quasi-judicial.

Part 26 — Department of Public Service Regulation

2-15-2601. Department of public service regulation — head.
2-15-2602. Public service commission — composition.

Parts 27 through 29 reserved

Part 30 — Department of Agriculture

2-15-3001. Department of agriculture — head.
2-15-3002. Montana wheat and barley committee — composition — allocation.
2-15-3003. Board of hail insurance.
2-15-3004. Montana alfalfa seed committee — composition — allocation.
2-15-3005. Repealed.
2-15-3006. Montana mint committee — composition — allocation.
2-15-3007 through 2-15-3010 reserved.
2-15-3011. Repealed.
2-15-3012 through 2-15-3014 reserved.
2-15-3015. Montana agriculture development council.

Part 31 — Department of Livestock

2-15-3101. Department of livestock — head.
2-15-3102. Board of livestock — composition.
2-15-3103. Repealed.
2-15-3104. Livestock crimestoppers commission.
2-15-3105. Board of milk control — membership — allocation — quasi-judicial.

Part 32 — Department of State Lands (Repealed)

2-15-3201. Repealed.
2-15-3202. Repealed.
2-15-3203. Terminated.
2-15-3204. Repealed.
2-15-3205. Repealed.

Part 33 — Department of Natural Resources and Conservation

2-15-3301. Department of natural resources and conservation — head.
2-15-3302. Repealed.
2-15-3303. Board of oil and gas conservation — composition — allocation — quasi-judicial.
2-15-3304. State coordinator for rangeland resources.
2-15-3305. Rangeland resources committee.
2-15-3306. Repealed.
2-15-3307. Board of water well contractors.
2-15-3308. Drought advisory committee.

Part 34 — Department of Fish, Wildlife, and Parks

2-15-3401. Department of fish, wildlife, and parks — head.
2-15-3402. Fish, wildlife, and parks commission — composition — qualifications — quasi-judicial.
2-15-3403. Renumbered 2-15-1883.
2-15-3404. Fish, wildlife, and parks crimestoppers board.
2-15-3405. Appointment of wetlands protection advisory council.

Part 35 — Department of Environmental Quality

2-15-3501. Department of environmental quality — head.
2-15-3502. Board of environmental review.

Chapter Cross-References

Elected executive officers — Governor, Lieutenant Governor, Secretary of State, Attorney General, Superintendent of Public Instruction, and Auditor, Art. VI, sec. 1, Mont. Const.

Terms of executive elected officers — 4 years commencing first Monday in January following election, Art. VI, sec. 1, Mont. Const.

General election — state officers, 13-1-104.

Part 1
General Provisions

2-15-101. Declaration of policy and purpose. (1) The purpose of this chapter is to comply with Article VI, section 7, of the Montana constitution which requires that all executive and administrative offices, boards, bureaus, commissions, agencies, and instrumentalities of the executive branch (except for the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor) and their respective functions, powers, and duties shall be allocated by law among not more than 20 principal departments so as to provide an orderly arrangement in the administrative organization of state government.

(2) It is the public policy of this state and the purpose of this chapter to create a structure of the executive branch of state government which is responsive to the needs of the people of this state and sufficiently flexible to meet changing conditions; to strengthen the executive capacity to administer effectively and efficiently at all levels; to encourage greater public participation in state government; to effect the grouping of state agencies into a reasonable number of departments primarily according to function; to provide that the responsibility within the executive branch of state government for the implementation of programs and policies is clearly fixed and ascertainable; and to eliminate overlapping and duplication of effort within the executive branch of state government.

History: En. 82A-102 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 2, Ch. 358, L. 1973; R.C.M. 1947, 82A-102.

2-15-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Advisory capacity" means furnishing advice, gathering information, making recommendations, and performing such other activities as may be necessary to comply with federal funding requirements and does not mean administering a program or function or setting policy.

(2) "Agency" means an office, position, commission, committee, board, department, council, division, bureau, section, or any other entity or instrumentality of the executive branch of state government.

(3) "Data and information technology resources" means data processing mainframe, microcomputer hardware, peripherals, software, special forms, personnel, facility resources, maintenance, training, electronically stored data, or other related resources.

(4) "Department" means a principal functional and administrative entity, created by this chapter within the executive branch of state government; is one of the 20 principal departments permitted under the constitution; and includes its units.

(5) "Department head" means a director, commission, board, commissioner, or constitutional officer in charge of a department created by this chapter.

(6) "Director" means a department head specifically referred to as a director in this chapter, and does not mean a commission, board, commissioner, or constitutional officer.

(7) "Executive branch" means the executive branch of state government referred to in the Montana constitution, Articles III and VI.

(8) "Function" means a duty, power, or program, exercised by or assigned to an agency, whether or not specifically provided for by law.

(9) "Quasi-judicial function" means an adjudicatory function exercised by an agency, involving the exercise of judgment and discretion in making determinations in controversies. The term includes but is not limited to the functions of interpreting, applying, and enforcing existing rules and laws; granting or denying privileges, rights, or benefits; issuing, suspending, or revoking licenses, permits, and certificates; determining rights and interests of adverse parties; evaluating and passing on facts; awarding compensation; fixing prices; ordering action or abatement of action; adopting procedural rules; holding hearings; and any other act necessary to the performance of a quasi-judicial function.

(10) "Quasi-legislative function" generally means making or having the power to make rules or set rates and all other acts connected with or essential to the proper exercise of a quasi-legislative function.

(11) "Unit" means an internal subdivision of an agency, created by law or by administrative action, including a division, bureau, section, or department, and an agency allocated to a department for administrative purposes only by this chapter.

History: En. 82A-103 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 3, Ch. 358, L. 1973; R.C.M. 1947, 82A-103; amd. Sec. 1, Ch. 592, L. 1987.

Cross-References

Quasi-legislative and quasi-judicial functions primarily regulated by administrative procedures, Title 2, ch. 4.

2-15-103. Policymaking authority and administrative powers of governor. In accordance with Article VI, section 4, of the Montana constitution, the governor is the chief executive officer of the state. Subject to the constitution and law of this state, the governor shall formulate and administer the policies of the executive branch of state government. In the execution of these policies, the governor has full powers of supervision, approval, direction, and appointment over all departments and their units, other than the office of the lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction, except as otherwise provided by law. Whenever a conflict arises as to the administration of the policies of the executive branch of state government, except for conflicts arising in the office of the lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction, the governor shall resolve the conflict, and the decision of the governor is final.

History: En. 82A-105 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 5, Ch. 358, L. 1973; R.C.M. 1947, 82A-105.

2-15-104. Structure of executive branch. (1) In accordance with the constitution, all executive and administrative offices, boards, commissions, agencies, and instrumentalities of the executive branch of state government and their respective functions are allocated by this chapter among and within the following departments or entities:

(a) department of administration;
(b) department of military affairs;
(c) department of revenue;
(d) state board of education;
(e) department of labor and industry;
(f) department of commerce;
(g) department of justice;
(h) department of public health and human services;
(i) department of corrections;
(j) department of transportation;
(k) department of public service regulation;
(l) department of agriculture;
(m) department of livestock;
(n) department of natural resources and conservation;
(o) department of fish, wildlife, and parks;
(p) department of environmental quality.

(2) For its internal structure, each department shall adhere to the following standard terms:

(a) The principal unit of a department is a division. Each division is headed by an administrator.

(b) The principal unit of a division is a bureau. Each bureau is headed by a chief.

(c) The principal unit of a bureau is a section. Each section is headed by a supervisor.

History: En. 82A-104 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 250, L. 1973; amd. Sec. 4, Ch. 358, L. 1973; amd. Sec. 2, Ch. 51, L. 1974; amd. Sec. 49, Ch. 213, L. 1975; R.C.M. 1947, 82A-104; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 274, L. 1981; amd. Sec. 1, Ch. 609, L. 1987; amd. Sec. 2, Ch. 262, L. 1991; amd. Sec. 2, Ch. 512, L. 1991; amd. Sec. 3, Ch. 418, L. 1995; amd. Secs. 7, 568, Ch. 546, L. 1995.

2-15-105. Attorney general, state auditor, superintendent of public instruction, and secretary of state — powers as department heads. The attorney general, state auditor, superintendent of public instruction, and secretary of state have, in addition to any other power vested by the Montana constitution or by law, the same powers accorded the heads of departments by this part. No duties relating to the governor or requirements for permission from or approval by the governor in this part apply to such elected officials in the exercise of such power unless a statute specifically requires the elected official to perform such duty or obtain such permission or approval.

History: En. Sec. 1, Ch. 20, L. 1983.

2-15-106 and 2-15-107 reserved.

2-15-108. Gender and racial balance — report to legislature. (1) As vacancies occur and appointments are made, all appointing authorities of all appointive boards, commissions, committees, and councils of state government shall take positive action to attain gender balance and proportional representation of minorities resident in Montana to the greatest extent possible.

(2) Pursuant to subsection (1), the secretary of state shall publish in the Montana Administrative Register on a monthly basis the recent appointments

made by the executive branch and the upcoming vacancies on executive boards and commissions.

(3) The governor shall report to the legislature, as provided in 5-11-210, on the progress made toward achieving the goals set forth in this section.

History: En. Secs. 1, 2, Ch. 208, L. 1991; amd. Sec. 6, Ch. 349, L. 1993.

Cross-References

Individual dignity, Art. II, sec. 4, Mont. Const.

Basic political rights, Title 49, ch. 1, part 2.

Discrimination by state, 49-2-308.

2-15-109 and 2-15-110 reserved.

2-15-111. Appointment and qualifications of department heads. (1) The governor shall appoint at the beginning of each gubernatorial term each department head who is a director in this chapter.

(2) An appointment of a director by the governor is subject to the confirmation of the senate, except that the governor may appoint a director to assume office before the senate meets in its next regular session to consider the appointment. A director so appointed is vested with all the functions of the office upon assuming the office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a director, the governor shall make a new appointment.

(3) A director serves at the pleasure of the governor. The governor may remove a director at any time and appoint a new director to the office.

(4) The governor shall select a director on the basis of his professional and administrative knowledge and experience and such additional qualifications as are provided by law.

(5) If a vacancy occurs in the office of a director, the governor shall appoint a new director to serve at the pleasure of the governor.

(6) Heads of departments who are not directors shall be elected or appointed and serve, and their vacancies filled, as provided by law.

History: En. 82A-106 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 6, Ch. 358, L. 1973; R.C.M. 1947, 82A-106.

Cross-References

Appointment of department heads by Governor, Art. VI, sec. 8, Mont. Const.

2-15-112. Duties and powers of department heads. (1) Except as otherwise provided by law, each department head shall:

(a) supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department by this chapter or other law;

(b) establish the policy to be followed by the department and employees;

(c) compile and submit reports and budgets for the department as required by law or requested by the governor;

(d) provide the governor with any information that the governor requests at any time on the operation of the department;

(e) represent the department in communications with the governor;

(f) prescribe rules, consistent with law and rules established by the governor, for the administration of the department; the conduct of the employees; the distribution and performance of business; and the custody, use, and preservation of the records, documents, and property pertaining to department business. The lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction may prescribe their own rules for their departments or offices, and the governor may not prescribe rules for them. The rules described in this subsection are limited to statements concerning only the internal management of the agency and not affecting private rights or procedures available to the public. This section does not authorize the adoption of any rule as rules are defined in the Montana Administrative Procedure Act.

(g) subject to the approval of the governor, establish the internal organizational structure of the department and allocate the functions of the department to units to promote the economic and efficient administration and operation of the department. The internal structure of the department must be established in accordance with 2-15-104(2).

(h) subject to law, establish and make appointments to necessary subordinate positions and abolish unnecessary positions;

(i) maintain a central office in Helena for the department and maintain other facilities throughout the state as may be required for the effective and efficient operation of the department.

(2) Except as otherwise provided by law, each department head may:

(a) subject to law, transfer employees between positions, remove persons appointed to positions, and change the duties, titles, and compensation of employees within the department;

(b) delegate any of the functions vested in the department head to subordinate employees;

(c) apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal government or any other source in administering the department's functions;

(d) enter into agreements with federal, state, and local agencies necessary to carry out the department's functions; and

(e) eliminate positions within the department. If the salary for an eliminated position is not redistributed as provided for under 2-18-1107, the office of budget and program planning shall increase the department's appropriation in the second year of the biennium by an amount equal to one-half of the savings resulting from the elimination of a position. The increased appropriation in the second year of the biennium may be expended at the discretion of the department head, provided that the expenditure is consistent with the goals and objectives of the department. The remaining one-half must revert to the original funding source. This subsection (e) does not apply to an agency allocated to a department in either year of the 2 years of the biennium for administrative purposes, as provided in 2-15-121. Section 17-7-138 does not apply to this subsection (e).

History: En. 82A-107 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 7, Ch. 358, L. 1973; amd. Sec. 26, Ch. 285, L. 1977; R.C.M. 1947, 82A-107; amd. Sec. 1, Ch. 239, L. 1989; amd. Sec. 1, Ch. 601, L. 1993; amd. Sec. 7, Ch. 23, Sp. L. November 1993.

Compiler's Comments

Termination Date Removed: Section 17, Ch. 417, L. 1997, and sec. 40, Ch. 532, L. 1997, removed the termination date for the amendments enacted by sec. 13, Ch. 23, Special Laws of November 1993.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

State merit system and personnel classification, Title 2, ch. 18.

2-15-113. Prior right of department head to agencies and records. Each department head designated by this chapter or appointed by the governor has, before assuming the office of the department head, full access to all agencies and their records within the department created by this chapter for the purpose of formulating plans for internal organization and the fiscal and personnel administration of the department.

History: En. 82A-109 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 9, Ch. 358, L. 1973; R.C.M. 1947, 82A-109.

Cross-References

Right of public to have access to public records, Art. II, sec. 9, Mont. Const.

Records of elected Executive Branch officers, Title 2, ch. 6, part 3.

2-15-114. Security responsibilities of departments for data and information technology resources. Each department head is responsible for assuring an adequate level of security for all data and information technology resources within his department and shall:

(1) develop and maintain written internal policies and procedures to assure security of data and information technology resources. The internal policies and procedures are confidential information and exempt from public inspection, except that such information must be available to the legislative auditor in performing his postauditing duties.

(2) designate an information security manager to administer the department's security program for data and information technology resources;

(3) implement appropriate cost-effective safeguards to reduce, eliminate, or recover from identified threats to data and information technology resources;

(4) ensure internal evaluations of the security program for data and information technology resources are conducted. The results of such internal evaluations are confidential and exempt from public inspection, except that such information must be available to the legislative auditor in performing his postauditing duties.

(5) include appropriate security requirements, as determined by the department, in the written specifications for the department's solicitation of data and information technology resources; and

(6) maintain an information technology plan, including a general description of the existing security program and future plans for assuring security of data and information technology resources.

History: En. Sec. 2, Ch. 592, L. 1987.

Cross-References

Security responsibility of Department of Administration, 2-17-503.

Security responsibility of Supreme Court, 3-2-605.

Security responsibility of Board of Regents, 20-25-301.

2-15-115 through 2-15-120 reserved.

2-15-121. Allocation for administrative purposes only. (1) An agency allocated to a department for administrative purposes only in this chapter shall:

(a) exercise its quasi-judicial, quasi-legislative, licensing, and policymaking functions independently of the department and without approval or control of the department;

(b) submit its budgetary requests through the department;

(c) submit reports required of it by law or by the governor through the department.

(2) The department to which an agency is allocated for administrative purposes only in this title shall:

(a) direct and supervise the budgeting, recordkeeping, reporting, and related administrative and clerical functions of the agency;

(b) include the agency's budgetary requests in the departmental budget;

(c) collect all revenues for the agency and deposit them in the proper fund or account. Except as provided in 37-1-101, the department may not use or divert the revenues from the fund or account for purposes other than provided by law.

(d) provide staff for the agency. Unless otherwise indicated in this chapter, the agency may not hire its own personnel.

(e) print and disseminate for the agency any required notices, rules, or orders adopted, amended, or repealed by the agency.

(3) The department head of a department to which any agency is allocated for administrative purposes only in this chapter shall:

(a) represent the agency in communications with the governor;

(b) allocate office space to the agency as necessary, subject to the approval of the department of administration.

History: En. 82A-108 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 8, Ch. 358, L. 1973; R.C.M. 1947, 82A-108.

Cross-References

Department of Administration to allot office space in Helena, 2-17-101.

2-15-122. Creation of advisory councils. (1) (a) A department head or the governor may create advisory councils.

(b) An agency or an official of the executive branch of state government other than a department head or the governor, including the superintendents of the state's institutions and the presidents of the units of the state's university system, may also create advisory councils but only if federal law or regulation requires that such official or agency create the advisory council as a condition to the receipt of federal funds.

(c) The board of public education, the board of regents of higher education, the state board of education, the attorney general, the state auditor, the secretary of state, and the superintendent of public instruction may create advisory councils, which shall serve at their pleasure, without the approval of the governor. They must file a record of each council created by them in the office of the governor and the office of the secretary of state in accordance with subsection (9) of this section.

(2) Each advisory council created under this section shall be known as the ".... advisory council".

(3) The creating authority shall prescribe the composition and advisory functions of each advisory council created; appoint its members, who shall serve at the pleasure of the governor; and specify a date when the existence of each advisory council ends.

(4) Advisory councils may be created only for the purpose of acting in an advisory capacity as defined in 2-15-102.

(5) Unless he is a full-time salaried officer or employee of this state or of any political subdivision of this state, each member is entitled to be paid in an amount to be determined by the department head, not to exceed $25 for each day in which he is actually and necessarily engaged in the performance of council duties, and he is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of council duties. Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

(6) Unless otherwise specified by the creating authority, at its first meeting in each year each advisory council shall elect a chairman and such other officers as it considers necessary.

(7) Unless otherwise specified by the creating authority, each advisory council shall meet at least annually and shall also meet on the call of the creating authority or the governor and may meet at other times on the call of the chairman or a majority of its members. An advisory council may not meet outside the city of Helena without the express prior authorization of the creating authority.

(8) A majority of the membership of an advisory council constitutes a quorum to do business.

(9) Except as provided in subsection (1)(c) of this section, an advisory council may not be created or appointed by a department head or any other official without the approval of the governor. In order for the creation or approval of the creation of an advisory council to be effective, the governor must file in his office and in the office of the secretary of state a record of the council created showing the council's:

(a) name, in accordance with subsection (2) of this section;

(b) composition;

(c) names and addresses of the appointed members;

(d) purpose;

(e) term of existence, in accordance with subsection (10) of this section.

(10) An advisory council may not be created to remain in existence longer than 2 years after the date of its creation or beyond the period required to receive federal or private funds, whichever occurs later, unless extended by the governor or by the board of public education, the board of regents of higher education, the state board of education, the attorney general, the state auditor, the secretary of state, or the superintendent of public instruction for those advisory councils created in the manner set forth in subsection (1)(c) of this section. If the existence of an advisory council is extended, they shall specify a new date, not more than 2 years later, when the existence of the advisory council ends and file a record of the order in the office of the governor and the office of the secretary of state. The existence of any advisory council may be extended as many times as necessary.

History: En. 82A-110 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 358, L. 1973; amd. Sec. 3, Ch. 51, L. 1974; amd. Sec. 56, Ch. 439, L. 1975; R.C.M. 1947, 82A-110; amd. Sec. 3, Ch. 83, L. 1989; amd. Sec. 4, Ch. 509, L. 1989; amd. Sec. 1, Ch. 119, L. 1991.

2-15-123. Administratively created agencies — prohibition. The governor, a department head, or any other official of the executive branch of state government or an agency may not, by administrative action, create or attempt to create an agency of state government. This section does not apply to:

(1) advisory councils created in accordance with 2-15-122;

(2) units within the internal structure of a department established under 2-15-112(1)(g).

History: En. 82A-111 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 11, Ch. 358, L. 1973; R.C.M. 1947, 82A-111.

2-15-124. Quasi-judicial boards. If an agency is designated by law as a quasi-judicial board for the purposes of this section, the following requirements apply:

(1) The number of and qualifications of its members are as prescribed by law. In addition to those qualifications, unless otherwise provided by law, at least one member shall be an attorney licensed to practice law in this state.

(2) The governor shall appoint the members. A majority of the members shall be appointed to serve for terms concurrent with the gubernatorial term and until their successors are appointed. The remaining members shall be appointed to serve for terms ending on the first day of the third January of the succeeding gubernatorial term and until their successors are appointed. It is the intent of this subsection that the governor appoint a majority of the members of each quasi-judicial board at the beginning of his term and the remaining members in the middle of his term. As used in this subsection, "majority" means the next whole number greater than half.

(3) The appointment of each member is subject to the confirmation of the senate then meeting in regular session or next meeting in regular session following the appointment. A member so appointed has all the powers of the office upon assuming that office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a member, the governor shall appoint a new member to serve for the remainder of the term.

(4) A vacancy shall be filled in the same manner as regular appointments, and the member appointed to fill a vacancy shall serve for the unexpired term to which he is appointed.

(5) The governor shall designate the chairman. The chairman may make and second motions and vote.

(6) Members may be removed by the governor only for cause.

(7) Unless otherwise provided by law, each member is entitled to be paid $50 for each day in which he is actually and necessarily engaged in the performance of board duties, and he is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of board duties. Members who are full-time salaried officers or employees of this state or of a political subdivision of this state are not entitled to be compensated for their service as members except when they perform their board duties outside their regular working hours or during time charged against their annual leave, but such members are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503. Ex officio board members may not receive compensation but shall receive travel expenses.

(8) A majority of the membership constitutes a quorum to do business. A favorable vote of at least a majority of all members of a board is required to

adopt any resolution, motion, or other decision, unless otherwise provided by law.

History: En. 82A-112 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 12, Ch. 358, L. 1973; amd. Sec. 57, Ch. 439, L. 1975; amd. Sec. 1, Ch. 186, L. 1977; R.C.M. 1947, 82A-112(1), (2)(a), (3) thru (8); amd. Sec. 1, Ch. 83, L. 1983; amd. Sec. 1, Ch. 672, L. 1983; amd. Sec. 1, Ch. 650, L. 1985.

Cross-References

Professions and Occupations, Title 37.

2-15-125. Future agencies and functions. If an agency or a function is not allocated or transferred to a department or a constitutional office by this chapter or any other act of the legislature, the governor shall, by executive order, allocate that agency for administrative purposes only or function to the appropriate principal department or constitutional office. The governor shall transmit copies of all executive orders issued under this section to the legislature at its next regular session.

History: En. 82A-115 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 13, Ch. 358, L. 1973; R.C.M. 1947, 82A-115.

2-15-126. Terminated. Sec. 4, Ch. 237, L. 1993.

History: En. Sec. 1, Ch. 237, L. 1993.

2-15-127. Terminated. Sec. 4, Ch. 237, L. 1993.

History: En. Sec. 2, Ch. 237, L. 1993.

2-15-128. Terminated. Sec. 4, Ch. 237, L. 1993.

History: En. Sec. 3, Ch. 237, L. 1993.

2-15-129 and 2-15-130 reserved.

2-15-131. Rights of state personnel. Unless otherwise provided in this chapter, each state officer or employee affected by the reorganization of the executive branch of state government under this chapter is entitled to all rights which he possessed as a state officer or employee before the effective date of the applicable part of this chapter, including rights to tenure in office and of rank or grade, rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union contract, rights to compensatory time earned, and any other rights under any law or administrative policy. This section is not intended to create any new rights for any state officer or employee but to continue only those rights in effect before the effective date of the applicable part of this chapter or an amendment to this chapter.

History: En. 82A-116 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 14, Ch. 358, L. 1973; R.C.M. 1947, 82A-116.

Cross-References

State employee classification, compensation, and benefits, Title 2, ch. 18.

2-15-132. Rights to property. The department or unit thereof that succeeds to all or part of the functions of an agency under a reorganization within the executive branch also succeeds to the rights to all real and persona property of that agency relating to the functions or parts of functions transferred. The property includes real property, records, office equipment, supplies contracts, books, papers, documents, maps, appropriations, accounts within and without the state treasury, funds, vehicles, and all other similar property However, the department or unit may not use or divert moneys in a fund or account for a purpose other than provided by law. The governor shall resolve any conflict as to the proper disposition of the property, and his decision is final. This section does not apply to property owned by the federal government.

History: En. 82A-117 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 15, Ch. 358, L. 1973; R.C.M. 1947, 82A-117; amd. Sec. 3, Ch. 575, L. 1981.

Cross-References

State property, Title 2, ch. 17.

State treasury fund and account structure, 17-2-102.

2-15-133. Rules and orders. The department or unit thereof that succeeds to all or part of the functions of an agency under a reorganization within the executive branch also succeeds to the rules and orders of that agency relating to the functions or parts of functions transferred. The rules and orders of any agency in effect before the effective date of the transfer remain in effect until amended, repealed, superseded, or nullified by proper authority or by law.

History: En. 82A-118 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 16, Ch. 358, L. 1973; R.C.M. 1947, 82A-118; amd. Sec. 4, Ch. 575, L. 1981.

Cross-References

Rule — definition, 2-4-102.

Adoption, amendment, or repeal of rule, Title 2, ch. 4, part 3.

Legislative authority to repeal or amend rule, 2-4-412.

2-15-134. Legal proceedings. The transfer or abolition of an agency or function by a reorganization within the executive branch does not affect the validity of any judicial or administrative proceeding pending or which could have been commenced before the effective date of the transfer or abolition, and the department or unit which succeeds to the functions of an agency relating to the proceeding shall be substituted as a party in interest.

History: En. 82A-119 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 17, Ch. 358, L. 1973; R.C.M. 1947, 82A-119; amd. Sec. 5, Ch. 575, L. 1981.

2-15-135. Rights and duties under existing transactions. The rights, privileges, and duties of the holders of bonds and other obligations issued and of the parties to contracts, leases, indentures, and other transactions entered into before the effective date of a transfer of functions by a reorganization within the executive branch, by the state or by any agency, officer, or employee thereof, and covenants and agreements as set forth therein remain in effect, and none of those rights, privileges, duties, covenants, or agreements are impaired or diminished by reason of the transfer of the functions of an agency or the abolition of an agency. The department or unit which succeeds to the functions of an agency is substituted for that agency and succeeds to its rights and duties under the provisions of those bonds, contracts, leases, indentures, and other transactions.

History: En. 82A-120 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 18, Ch. 358, L. 1973; R.C.M. 1947, 82A-120; amd. Sec. 6, Ch. 575, L. 1981.

2-15-136. References. Unless inconsistent with this chapter, if an agency is abolished or if a function of an agency is transferred to another agency, references to the abolished agency or to the agency whose functions were transferred in any law, contract, or other document shall apply to the agency which succeeds to the functions which were transferred.

History: En. 82A-121 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 19, Ch. 358, L. 1973; R.C.M. 1947, 82A-121; amd. Sec. 7, Ch. 575, L. 1981.

Cross-References

Changing agency references in MCA — Code Commissioner authority, 1-11-101.

2-15-137. Federal aid. If any part of a reorganization within the executive branch is ruled to be in conflict with federal requirements which are a prescribed condition to the receipt of federal aid by the state, an agency, or a political subdivision, that part of the reorganization has no effect and the governor may issue an executive order which substitutes for that part to the extent necessary to effectuate the receipt of federal aid. The order is effective until the legislature again acts upon the matter.

History: En. 82A-122 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 20, Ch. 358, L. 1973; R.C.M. 1947, 82A-122; amd. Sec. 8, Ch. 575, L. 1981.

2-15-138 through 2-15-149 reserved.

2-15-150. *(Temporary)* **Lewis and Clark bicentennial commission — membership — purpose — account.** (1) There is a Lewis and Clark bicentennial commission.

(2) The commission consists of 12 members, as follows:

(a) nine members who must be appointed by the governor, at least three of whom must be enrolled members of a Montana Indian tribe and live on a Montana Indian reservation, who shall serve 3-year staggered terms, who shall represent Montana's different geographical areas, and who must have an interest in the history of the Lewis and Clark expedition;

(b) the director of the Montana historical society, established in 22-3-101;

(c) the administrator of the parks division within the department of fish, wildlife, and parks, established in 2-15-3401; and

(d) the director of travel Montana.

(3) The commission is responsible for coordinating and promoting observance of Montana's bicentennial commemoration of the Lewis and Clark expedition and the importance of the roles played by Montana's Indian people to the Lewis and Clark expedition. The commission may:

(a) cooperate with national, regional, statewide, and local events promoting the bicentennial;

(b) plan and coordinate or assist in planning and coordinating bicentennial events;

(c) engage in fundraising activities, including revenue-earning enterprises and the solicitation of grants, gifts, and donations;

(d) promote public education concerning the Lewis and Clark expedition and the history and culture of Montana's Indian people at the time of the Lewis and Clark expedition; and

(e) perform other related duties.

(4) There is a Montana Lewis and Clark bicentennial account. Money in the account may include money from revenue-earning enterprises, grants, gifts, or donations, money appropriated by the legislature, and interest earned on the account. Account funds must be used for the purposes described in this section.

(5) The commission is attached to the Montana historical society for administrative purposes only as provided in 2-15-121. *(Terminates December 31, 2007—sec. 2, Ch. 428, L. 1997.)*

History: En. Sec. 1, Ch. 428, L. 1997.

Compiler's Comments

Termination: Section 2, Ch. 428, L. 1997, provided: "[This act] [2-15-150] terminates December 31, 2007."

Part 2

Governor

2-15-201. Powers and duties of governor. In addition to the duties prescribed by the constitution, the governor shall perform the following duties:

(1) He shall supervise the official conduct of all executive and ministerial officers.

(2) He shall see that all offices are filled and the duties thereof performed or, in default thereof, apply such remedy as the law allows. If the remedy is imperfect, he shall acquaint the legislature therewith at its next session.

(3) (a) He shall make the appointments and supply the vacancies as required by law. When a vacancy in a position on a council, board, commission, or committee has occurred or is expected to occur and must be filled by gubernatorial appointment, the governor shall have posted in a conspicuous place in the state capitol a notice:

(i) announcing the actual or anticipated vacancy in the position;
(ii) describing the qualifications for the position, if any; and
(iii) describing the procedure for applying for appointment to the position.

(b) A copy of the notice required under subsection (3)(a) must be sent to the lieutenant governor who may publish the notice in an appropriate publication.

(4) He is the sole official organ of communication between the government of this state and the government of any other state or of the United States.

(5) Whenever any suit or legal proceeding is pending against this state or which may affect the title of this state to any property or which may result in any claim against the state, he may direct the attorney general to appear on behalf of the state and may employ such additional counsel as he may judge expedient.

(6) He may require the attorney general or county attorney of any county to inquire into the affairs or management of any corporation existing under the laws of this state.

(7) He may require the attorney general to aid the county attorney in the discharge of his duties.

(8) He may offer rewards not exceeding $1,000 each, payable out of the general fund, for the apprehension of any convict who has escaped from the state prison or any person who has committed or is charged with an offense punishable by death.

(9) He shall perform such duties respecting fugitives from justice as are prescribed by Title 46, chapter 30.

(10) He shall issue land warrants and patents, as prescribed in 77-2-342.

(11) He may require any officer or board to make special reports to him, upon demand, in writing.

(12) He shall discharge the duties of member of the board of examiners, of nonvoting ex officio member of the state board of education, and of member of the board of land commissioners.

(13) He has the other powers and must perform the other duties as are devolved upon him by this code or any other law of this state.

History: En. Sec. 370, Pol. C. 1895; re-en. Sec. 145, Rev. C. 1907; re-en. Sec. 124, R.C.M. 1921; Cal. Pol. C. Sec. 380; re-en. Sec. 124, R.C.M. 1935; amd. Sec. 94, Ch. 199, L. 1965; R.C.M. 1947, 82-1301; amd. Sec. 10, Ch. 184, L. 1979; amd. Sec. 10, Ch. 575, L. 1981; amd. Sec. 3, Ch. 125, L. 1983; amd. Sec. 1, Ch. 142, L. 1987.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.; 2-16-211.

Special sessions of Legislature, Art. V, sec. 6, Mont. Const.; Art. VI, sec. 11, Mont. Const.; 5-2-103; 5-3-101.

Impeachment, Art. V, sec. 13, Mont. Const.; Title 5, ch. 5, part 4.

Election — must file jointly with candidate for Lieutenant Governor, Art. VI, sec. 2, Mont. Const.

Qualifications for office, Art. VI, sec. 3, Mont. Const.

Succession and Acting Governor, Art. VI, sec. 6 and 14, Mont. Const.; 2-16-511 through 2-16-515, 2-16-521.

Policymaking and administrative powers, Art. VI, sec. 8, Mont. Const.; 2-15-103.

Action by Governor on legislative bills, Art. VI, sec. 9, Mont. Const.; Title 5, ch. 4, part 3.

Budget responsibilities, Art. VI, sec. 9, Mont. Const.; Title 17, ch. 7; 17-8-102.

Executive clemency, Art. VI, sec. 12, Mont. Const.

Commander-in-chief of militia, Art. VI, sec. 13, Mont. Const.; 10-3-305.

Lieutenant Governor as Acting Governor — absences from state, Art. VI, sec. 14(2), Mont. Const.

Reports from officers of Executive Branch, Art. VI, sec. 15, Mont. Const.

Membership in:

Board of Land Commissioners, Art. X, sec. 4, Mont. Const.; 77-1-201.

State Board of Education — ex officio, Art. X, sec. 9, Mont. Const.

Board of Regents — ex officio, Art. X, sec. 9, Mont. Const.; 2-15-1505.

Board of Public Education — ex officio, Art. X, sec. 9, Mont. Const.; 2-15-1507.

Board of Examiners, 2-15-1007.

Immunity from liability, 2-9-113.

Salary, 2-16-405.

Resignation, 2-16-502.

Inability to perform office, 2-16-504.

Appointments to fill vacancies in public offices, 2-16-505, 2-16-506.

Travel expenses, 2-18-501.

Declaration of martial rule, 10-1-106.

Emergency and disaster powers, Title 10, ch. 3.

Budget responsibilities of Governor-elect, 17-7-121.

Transfer of convicted offenders under treaty, 53-1-106.

Energy supply emergency powers, Title 90, ch. 4, part 3.

2-15-202. Repealed. Sec. 32, Ch. 184, L. 1979.

History: En. Sec. 372, Pol. C. 1895; re-en. Sec. 147, Rev. C. 1907; re-en. Sec. 126, R.C.M. 1921; Cal. Pol. C. Sec. 382; re-en. Sec. 126, R.C.M. 1935; R.C.M. 1947, 82-1303.

2-15-203. Western governors' university. The governor is authorized to act in consort with the governors of other states to create an entity to facilitate the provision of higher education services by electronic means to the residents of Montana and other states. The governor may take any steps necessary for Montana to join the entity that is created, including the payment of a fee, assessment, or other charge required for membership. It is anticipated that the entity will be called the western governors' university, but this authorization is not dependent on the entity being known by any specific name.

History: En. Sec. 1, Ch. 205, L. 1997.

Compiler's Comments

Effective Date: Section 3, Ch. 205, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 7, 1997.

2-15-204 through 2-15-210 reserved.

2-15-211. Mental disabilities board of visitors — composition — allocation. (1) The governor shall appoint a mental disabilities board of visitors.

(2) The board shall consist of five persons representing but not limited to consumers, doctors of medicine, and the behavioral sciences, at least three of whom may not be professional persons and at least one of whom must be a representative of an organization concerned with the care and welfare of the mentally ill and one representative of an organization concerned with the care and welfare of the mentally retarded or persons with developmental disabilities. No one may be a member of the board who is a full-time agent or employee of the department of public health and human services or a mental health facility affected by Title 53, chapter 20, part 1, and chapter 21, part 1, except this prohibition does not affect any employee of a state college or university.

(3) The mental disabilities board of visitors is attached to the governor for administrative purposes. It may employ staff for the purpose of carrying out its duties as set out in Title 53, chapter 20, part 1, and chapter 21, part 1.

History: Ap. p. Sec. 30, Ch. 466, L. 1975; amd. Sec. 16, Ch. 546, L. 1977; Sec. 38-1330, R.C.M. 1947; Ap. p. Sec. 32, Ch. 468, L. 1975; amd. Sec. 18, Ch. 546, L. 1977; Sec. 38-1232, R.C.M. 1947; R.C.M. 1947, 38-1232(part), 38-1330(part); amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 8, Ch. 546, L. 1995.

Cross-References

Mental Disabilities Board of Visitors — generally, Title 53, ch. 20, part 1.

Powers and duties, 53-20-104.

2-15-212. Reserved water rights compact commission. (1) There is created a reserved water rights compact commission. In negotiations, the commission is acting on behalf of the governor.

(2) Commissioners are appointed as follows:

(a) two members of the house of representatives appointed by the speaker, each from a different political party;

(b) two members of the senate appointed by the president, each from a different political party;

(c) four members designated by the governor; and

(d) one member designated by the attorney general.

(3) Legislative members of the commission are entitled to receive compensation and expenses as provided in 5-2-301 for each day actually spent on commission business. Other members are entitled to salary and expenses as state employees.

(4) The commission is attached to the department of natural resources and conservation for administrative purposes only, as prescribed in 2-15-121, unless inconsistent with the provisions of Title 85, chapter 2, part 7. A sufficient and appropriate staff must be assigned to serve the commission within the budget established by the legislature. The commission staff is a principal unit within the department, and the commission shall direct and assign the staff.

(5) Members are appointed for 4-year terms and may be reappointed. A egislative member position is vacant if the person no longer serves in the egislature. The position of a member appointed by the governor or attorney

general is vacant if that person is elected to the legislature. A vacancy must be filled in the manner of the original appointment.

History: En. Sec. 27, Ch. 697, L. 1979; amd. Sec. 1, Ch. 784, L. 1991; amd. Sec. 4, Ch. 418, L. 1995.

Cross-References

General powers and duties, Title 85, ch. 2, part 7.

Report on status of negotiations of Commission, 85-2-705.

2-15-213. Flathead basin commission — membership — compensation. (1) There is a Flathead basin commission.

(2) The commission consists of 21 members selected as follows:

(a) seven members appointed by the governor from industrial, environmental, and other interests affected by Title 75, chapter 7, part 3, one of whom must be on the governor's staff and who also serves as the executive director;

(b) one member who is the director of the department of natural resources and conservation or the director's designee;

(c) one member appointed by the Flathead County commissioners;

(d) one member appointed by the Lake County commissioners;

(e) one member appointed by the Confederated Salish and Kootenai Tribes;

(f) one member appointed by the United States department of agriculture, forest service regional forester for the northern region;

(g) one member appointed by the United States department of interior, national park service regional director for the Rocky Mountain region;

(h) one member appointed by the Flathead County conservation district board of supervisors;

(i) one member appointed by the Lake County conservation district board of supervisors;

(j) four ex officio members appointed respectively by the chief executive of the provincial government of the Province of British Columbia; the regional administrator of the United States environmental protection agency; the regional administrator of the United States department of the interior, bureau of reclamation; and the holder of a license issued for the Flathead project under the Federal Power Act;

(k) two ex officio members who are the director of the department of environmental quality and the director of the department of fish, wildlife, and parks or their designees.

(3) The commissioners shall serve without pay. The commissioners listed in subsection (2)(a), except the commissioner on the governor's staff, are entitled to reimbursement for travel, meals, and lodging while engaged in commission business, as provided in 2-18-501 through 2-18-503.

(4) The commission is attached to the governor's office for administrative purposes only.

History: En. Sec. 4, Ch. 424, L. 1983; amd. Sec. 1, Ch. 95, L. 1985; amd. Sec. 1, Ch. 176, L. 1989; amd. Sec. 5, Ch. 418, L. 1995; amd. Sec. 1, Ch. 451, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 451 inserted (2)(h) concerning Flathead County conservation district board of supervisors; inserted (2)(i) concerning Lake County conservation district board of supervisors; in (2)(j) reduced ex officio members from six to four, and deleted "the administrator of the Bonneville power administration; the chief of engineers of the United

States army corps of engineers"; and made minor changes in style.

2-15-214. Flathead basin commission — term of appointment — quorum — vacancy — chairman — vote. (1) The commission members shall serve staggered 4-year terms.

(2) A majority of the membership, other than ex officio members, constitutes a quorum of the commission.

(3) A vacancy on the commission must be filled in the same manner as regular appointments, and the member so appointed shall serve for the unexpired term to which he is appointed.

(4) The commission shall select a chairman from among its members. The chairman may make motions and vote.

(5) A favorable vote of at least a majority of all members, except ex officio members, of the commission is required to adopt any resolution, motion, or other decision of the commission.

History: En. Sec. 5, Ch. 424, L. 1983.

2-15-215. Flathead basin commission staff and office location. (1) The executive director of the commission shall be compensated on a pro rata basis from commission funds, calculated upon the time he is required by the governor to serve the commission.

(2) An office for the commission may be established at a community located in the basin, and sufficient and appropriate staff must be assigned to serve the commission.

History: En. Sec. 6, Ch. 424, L. 1983.

2-15-216. Repealed. Sec. 2, Ch. 25, L. 1991.

History: En. Sec. 2, Ch. 707, L. 1985.

2-15-217. Office of state coordinator of Indian affairs. (1) There is an office of state coordinator of Indian affairs. The office is allocated to the governor's office for administrative purposes only as prescribed in 2-15-121.

(2) The coordinator must be appointed by the governor from a list of five qualified Indian applicants agreed upon by the tribal councils of the respective Indian tribes of the state. The coordinator shall serve at the pleasure of the governor.

History: En. Sec. 2, Ch. 203, L. 1951; amd. Sec. 12, Ch. 237, L. 1967; amd. Sec. 2, Ch. 319, L. 1969; amd. Sec. 2, Ch. 160, L. 1974; R.C.M. 1947, 82-2702; amd. Sec. 14, Ch. 184, L. 1979; MCA 1979, 2-15-1111; amd. and redes. 2-15-1813 by Sec. 12, Ch. 274, L. 1981; Sec. 2-15-1813, MCA 1993; redes. 2-15-217 by Sec. 2, Ch. 52, L. 1995.

Cross-References

Indian affairs — planning and coordination, Title 90, ch. 11.

Duties of State Coordinator of Indian Affairs, 90-11-102.

2-15-218 through 2-15-220 reserved.

2-15-221. Governor-elect — staff and services provided. (1) As used in this section, unless the context clearly indicates otherwise, "governor-elect" means the person elected at a general election to the office of governor who is not the incumbent governor.

(2) The department of administration shall provide the governor-elect and his necessary staff with suitable office space in the capitol building, together

with furnishings, supplies, equipment, and telephone service for the period between the general election and the inauguration.

(3) The governor-elect may obtain the assistance of persons of his own choosing, between the general election and inauguration, and they shall receive reasonable compensation for their services. These persons shall be state employees, but they shall not be subject to any civil service or personnel laws or rules of the state.

(4) In addition, the governor-elect may request that the department of administration assign one or more employees of the department of administration to assist the governor-elect and his staff in the study and interpretation of information. Employees of the department of administration shall be assigned for the time necessary between the general election and the inauguration.

(5) The funds necessary to carry out the provisions of this section shall be included in the appropriation request of the department of administration to the legislature meeting in regular session immediately prior to a general election when a governor will be chosen.

History: (1)En. Sec. 1, Ch. 47, L. 1969; Sec. 82-1311, R.C.M. 1947; (2) thru (5)En. Secs. 2, 3, 4, Ch. 47, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; Secs. 82-1312, 82-1313, 82-1314, R.C.M. 1947; R.C.M. 1947, 82-1311, 82-1312, 82-1313, 82-1314.

Cross-References

Inauguration — first Monday of January, Art. VI, sec. 1, Mont. Const.

2-15-222 through 2-15-224 reserved.

2-15-225. Interagency coordinating council for state prevention programs. (1) There is an interagency coordinating council for state prevention programs consisting of the following members:

(a) the attorney general provided for in 2-15-501;

(b) the director of the department of public health and human services provided for in 2-15-2201;

(c) the superintendent of public instruction provided for in 2-15-701;

(d) the presiding officer of the Montana children's trust fund board;

(e) two persons appointed by the governor who have experiences related to the private or nonprofit provision of prevention programs and services;

(f) the administrator of the board of crime control provided for in 2-15-2006;

(g) the commissioner of labor and industry provided for in 2-15-1701;

(h) the director of the department of corrections provided for in 2-15-2301; and

(i) the state coordinator of Indian affairs provided for in 2-15-217.

(2) The coordinating council shall perform the following duties:

(a) develop, through interagency planning efforts, a comprehensive and coordinated prevention program delivery system that will strengthen the healthy development, well-being, and safety of children, families, individuals, and communities;

(b) develop appropriate interagency prevention programs and services that address the problems of at-risk children and families and that can be provided in a flexible manner to meet the needs of those children and families;

(c) study various financing options for prevention programs and services;

(d) ensure that a balanced and comprehensive range of prevention services is available to children and families with specific or multiagency needs;

(e) assist in development of cooperative partnerships among state agencies and community-based public and private providers of prevention programs;

(f) prepare and present to the legislature and to the appropriate standing and interim legislative committees a unified budget for state prevention programs, which must be published in the governor's executive budget; and

(g) develop, maintain, and implement benchmarks for state prevention programs. As used in this subsection, "benchmark" means a specified reference point in the future that is used to measure the state of affairs at that point in time and to determine progress toward or the attainment of an ultimate goal, which is an outcome reflecting the desired state of affairs.

(3) The coordinating council shall cooperate with and report to any standing or interim legislative committee that is assigned to study the policies and funding for prevention programs or other state programs and policies related to children and families.

(4) The coordinating council must be compensated, reimbursed, and otherwise governed by the provisions of 2-15-122.

(5) The coordinating council is attached for administrative purposes only to the governor's office, which may assist the council by providing staff and budgetary, administrative, and clerical services that the council or its presiding officer requests.

(6) Staffing and other resources may be provided to the coordinating council only from state and nonstate resources donated to the council and from direct appropriations by each legislature.

History: En. Sec. 1, Ch. 29, L. 1993; amd. Sec. 1, Ch. 25, L. 1995; amd. Sec. 6, Ch. 418, L. 1995; amd. Sec. 9, Ch. 546, L. 1995; amd. Sec. 1, Ch. 173, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 173 in (1), before "members", deleted "eight"; inserted (1)(h) and (1)(i) adding the Director of the Department of Corrections and the State Coordinator of Indian Affairs as Council members; inserted (2)(f) requiring a unified budget; inserted (2)(g) requiring benchmarks; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Montana Family Policy Act, Title 41, ch. 7.

2-15-226 through 2-15-230 reserved.

2-15-231. Renumbered 2-15-2206. Sec. 314(2), Ch. 42, L. 1997.

2-15-232. Duties and assistance. (1) The coordinator of aging shall, with the advice of the advisory council on aging, assist the governor and the department of public health and human services in planning, coordination, and operation of programs within state government that affect senior citizens of the state.

(2) The coordinator shall meet with senior citizens and the general public to gather information on the needs of senior citizens and the effectiveness of state programs in meeting those needs.

(3) The coordinator shall advise the governor and the director of the department of public health and human services as to ways to improve the effectiveness of programs that affect senior citizens.

History: En. Sec. 2, Ch. 664, L. 1983; amd. Sec. 2, Ch. 336, L. 1993; amd. Sec. 11, Ch. 546, L. 1995.

2-15-233 through 2-15-235 reserved.

2-15-236. Treasure state living cultural treasures program. There is a treasure state living cultural treasures program to honor Montanans who are dedicated to preserving and passing on the traditional skills and knowledge found in Montana and whose work exemplifies Montana's culture in all of its varieties. The names of the honorees will be made available to educators, community groups, and other interested persons as a resource for information and education. A speakers' bureau registry of honorees will be created and maintained by the governor's office.

History: En. Sec. 1, Ch. 294, L. 1995.

2-15-237. Purpose. (1) The purpose of the treasure state living cultural treasures program is to preserve the historical traditions and culture of Montana by honoring those who actively practice and preserve the skills and knowledge of Montana's culture. The program is intended to honor those who have devoted their energies to carrying forward the skills of the past and preserving the traditions and, in doing so, exemplify the vitality, variety, and excellence of Montana's culture. Montana and the surrounding region have a unique western culture that has developed from living in a sometimes harsh and always variable climate and from creating beauty and recreation from the tasks of ordinary life.

(2) Montana culture includes the forms in which the common culture of Montana manifests itself, such as in traditional music, arts and crafts, survival skills, cooking, occupational skills, storytelling, ritual and custom, and a myriad of Montana cultural and traditional artistic expressions. The most important elements of Montana's history and culture have been passed on through the generations by Montanans who pursue traditional occupations and create beauty in their everyday life.

(3) Montana's culture is a blend of native, ethnic, racial, occupational, and regional traditions that sometimes coexist and sometimes blend, including traditionally masculine and feminine domains that together create a many-faceted culture within the state.

History: En. Sec. 2, Ch. 294, L. 1995.

2-15-238. Honorees — nominations — selection — certificate of proclamation — speakers' bureau. (1) County commissioners may annually solicit nominations of persons who exemplify aspects of Montana's common culture from local groups in their county, including but not limited to senior citizens' groups, community centers, county historical societies, local art agencies, labor and trade organizations, schools, and other local groups.

(2) When a solicitation of nominations is completed, the county commissioners shall compile a list of nominees from their county and present the list to the governor. The governor shall select the honorees.

(3) Each honoree shall receive:

(a) a certificate signed by the governor proclaiming the honoree to be a "Treasure State Living Cultural Treasure"; and

(b) an invitation to be included in the speakers' bureau.

(4) The speakers' bureau is a registry, maintained by the governor's office, of the treasure state living cultural treasures honorees and the skills and areas for which each honoree is recognized and can be called upon as a resource for

the school-age population and all other residents of the state. The registry may include a fee schedule that delineates the speaker's fee, reimbursement for travel costs and per diem, and any other necessary expenses, if any, to be paid to the speaker by the organizations and schools that arrange for the speaker's services.

(5) The governor's office shall send on an annual basis a copy of the registry to the superintendent of public instruction, who shall send a copy to each school district of the state.

(6) The superintendent of public instruction shall inform and encourage the school districts to use the registry to choose speakers in various areas of Montana's common culture as resources in furthering the knowledge of the school-age population in the state on the unique western culture of Montana.

(7) The registry is to be made available for a reasonable charge to any person in the state upon request.

(8) The Indian tribal governments are invited to participate in the treasure state living cultural treasures program and to submit nominees to the governor as provided in subsection (2). For the purposes of this subsection, "Indian tribal government" means an Indian tribe, nation, or other organized group or community located within the existing boundaries of Montana.

History: En. Sec. 3, Ch. 294, L. 1995.

Part 3

Lieutenant Governor

2-15-301. Office of lieutenant governor. There is created an office of lieutenant governor.

History: En. Sec. 1, Ch. 297, L. 1973; R.C.M. 1947, 82-1702.1.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.; 2-16-211.

Impeachment, Art. V, sec. 13, Mont. Const.; Title 5, ch. 5, part 4.

Election — shall file jointly with Governor, Art. VI, sec. 2, Mont. Const.

Qualifications of office, Art. VI, sec. 3, Mont. Const.

Delegation of duties from Governor, Art. VI, sec. 4, Mont. Const.

Vacancy in office of Lieutenant Governor, Art. VI, sec. 6, Mont. Const.; Title 2, ch. 16, part 5.

Lieutenant Governor as Acting Governor, Art. VI, sec. 14(2), Mont. Const.

Salary, 2-16-405.

Inability to perform office, 2-16-504.

2-15-302. Powers and duties of lieutenant governor. (1) The lieutenant governor may:

(a) prescribe rules for the administration of the office;

(b) hire personnel for the office and establish policy to be followed by such personnel; and

(c) compile and submit a budget for the office.

(2) The lieutenant governor shall perform the duties provided by law and those delegated to him by the governor.

History: En. Secs. 2, 3, Ch. 297, L. 1973; R.C.M. 1947, 82-1702.2, 82-1702.3.

Cross-References

Delegation of duties from Governor, Art. VI, sec. 4, Mont. Const.

State personnel law — not applicable to staff, 2-18-103, 2-18-104.

2-15-303. Repealed. Sec. 1, Ch. 66, L. 1979.

History: En. Sec. 392, Pol. C. 1895; re-en. Sec. 152, Rev. C. 1907; re-en. Sec. 132, R.C.M. 1921; re-en. Sec. 132, R.C.M. 1935; amd. Sec. 5, Ch. 297, L. 1973; R.C.M. 1947, 82-1703.

2-15-304 through 2-15-388 reserved.

2-15-389. Terminated. Sec. 8, Ch. 664, L. 1985.
History: En. Sec. 3, Ch. 664, L. 1985.

Part 4

Secretary of State

2-15-401. Duties of secretary of state — authority. (1) In addition to the duties prescribed by the constitution, it is the duty of the secretary of state to:

(a) attend at every session of the legislature for the purpose of receiving bills and resolutions and to perform other duties as may be devolved upon the secretary of state by resolution of the two houses or either of them;

(b) keep a register of and attest the official acts of the governor, including all appointments made by the governor, with date of commission and names of appointees and predecessors;

(c) affix the great seal, with the secretary of state's attestation, to commissions, pardons, and other public instruments to which the official signature of the governor is required;

(d) record in proper books all articles of incorporation filed in the secretary of state's office;

(e) take and file receipts for all books distributed by the secretary of state and direct the county clerk of each county to do the same;

(f) certify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the governor;

(g) furnish, on demand, to any person paying the fees, a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in the secretary of state's office;

(h) keep a fee book in which must be entered all fees, commissions, and compensation earned, collected, or charged, with the date, name of payer, paid or unpaid, and the nature of the service in each case, which must be verified annually by the secretary of state's affidavit entered in the fee book;

(i) file in the secretary of state's office descriptions of seals in use by the different state officers;

(j) discharge the duties of member of the board of examiners and of the board of land commissioners and all other duties required by law;

(k) register marks as provided in Title 30, chapter 13, part 3;

(l) report annually to the legislative services division all watercourse name changes received pursuant to 85-2-134 for publication in the Laws of Montana;

(m) keep a register of all applications for pardon or for commutation of any sentence, with a list of the official signatures and recommendations in favor of each application.

(2) The secretary of state may develop and implement a statewide electronic filing system as described in 2-15-404.

History: **En. Sec. 401, Pol. C. 1895; re-en. Sec. 154, Rev. C. 1907; re-en. Sec. 134, R.C.M. 1921; Cal. Pol. C. Sec. 408; re-en. Sec. 134, R.C.M. 1935; amd. Sec. 95, Ch. 199, L. 1965; amd. Sec. 1, Ch. 96, L. 1973; R.C.M. 1947, 82-2202; amd. Sec. 2, Ch. 159, L. 1979; amd. Sec. 11, Ch. 184, L. 1979; amd. Sec. 19, Ch. 429, L. 1979; amd. Sec. 1, Ch. 494, L. 1981; amd. Sec. 1, Ch. 79, L. 1983; amd. Sec. 4, Ch. 125, L. 1983; amd. Sec. 9, Ch. 467, L. 1987; amd. Sec. 8, Ch. 545, L. 1995; amd. Sec. 2, Ch. 291, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 291 inserted (2) authorizing the Secretary of State to develop and implement a statewide electronic filing system; and made minor changes in style.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.; 2-16-211.

Impeachment, Art. V, sec. 13, Mont. Const.; Title 5, ch. 5, part 4.

Election, Art. VI, sec. 2, Mont. Const.

Qualifications of office, Art. VI, sec. 3, Mont. Const.

Duties, Art. VI, sec. 4, Mont. Const.

Vacancy in office — how filled, Art. VI, sec. 6, Mont. Const.; 2-16-505.

Board of Land Commissioners, Art. X, sec. 4, Mont. Const.; 77-1-201.

Administrative rules — duties concerning filing, publishing, and distributing, Title 2, ch. 4.

Filing and copying fees, 2-6-103.

Custody and reproduction of records by Secretary of State, 2-6-111.

Seal of state — custody, 2-6-111.

Board of Examiners, 2-15-1007.

Salary, 2-16-405.

Inability to perform office, 2-16-504.

Recall petitions — approval and filing, Title 2, ch. 16, part 6.

State personnel law — not applicable to staff, 2-18-103, 2-18-104.

Filing of legislative bills, Title 5, ch. 4, part 3.

Licensing of lobbyists, Title 5, ch. 7.

Election forms, directives, and instructions, 13-1-202.

Custody of election records, 13-1-204.

Election procedures generally, Title 13, ch. 10, 14, 19.

Regulation of voting machine use, 13-17-107.

Service on nonresident automobile drivers and owners, 25-3-602.

Long-arm service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Registration of assumed business names, Title 30, ch. 13, part 2.

Recordation of trademarks, 30-13-312 through 30-13-316.

Foreign corporations — authority to transact business, Title 35, ch. 1, part 10.

Powers and duties regarding business corporations, Title 35, ch. 1, part 13.

Nonprofit corporations — powers and duties of Secretary of State, Title 35, ch. 2, part 11.

Religious corporations sole — certificate of incorporation, 35-3-203.

Business trusts — formation and operation, Title 35, ch. 5, part 2.

Involuntary corporate dissolution and reinstatement by Secretary of State, Title 35, ch. 6.

Cooperative associations — formation, Title 35, ch. 15, part 2.

Cooperative agricultural marketing, 35-17-202.

Rural cooperative utilities, 35-18-203, 35-18-502.

Federal tax liens — filing, 71-3-204.

2-15-402. Deputy secretary of state. (1) The secretary of state shall appoint a chief deputy and a deputy who in the absence of the principal shall perform all the duties of office. In the case of a vacancy in the office of secretary of state, the chief deputy shall perform all the duties of the office until such disability be removed or vacancy filled.

(2) Such deputies shall subscribe, take, and file the oath of office provided by law for other state officers before entering upon the performance of their duties.

History: **En. Sec. 1, Ch. 86, L. 1903; re-en. Sec. 143, Rev. C. 1907; re-en. Sec. 122, R.C.M. 1921; re-en. Sec. 122, R.C.M. 1935; amd. Sec. 1, Ch. 181, L. 1947; amd. Sec. 1, Ch. 8, L. 1949; amd. Sec. 48, Ch. 177, L. 1965; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 82-601(part).**

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.; 2-16-211; 2-16-212; 2-16-302.

Deputies of state officers, Title 2, ch. 16, part 3.

Vacancy in office, 2-16-501, 2-16-505.

Powers and duties of officer filling unexpired term, 2-16-507.

2-15-403. Sale of corporate information list — rulemaking authority. The secretary of state may offer for sale to private or public entities the corporate information list developed by the secretary of state. The information on the corporate information list must be limited to the information available on the corporate information computer system maintained by the secretary of state. If the list is offered for sale, the secretary of state shall adopt rules under the Montana Administrative Procedure Act specifying the fee to be charged for the list.

History: En. Sec. 1, Ch. 289, L. 1991.

2-15-404. Electronic filing system — requirements — rules. (1) As authorized by 2-15-401, the secretary of state may develop and implement a statewide electronic filing system to accommodate the electronic filing of records and documents that are required to be filed in the office of the secretary of state.

(2) If the secretary of state develops and implements a statewide electronic filing system, the secretary of state shall establish a central data base for all records and documents filed electronically with the secretary of state.

(3) If the secretary of state develops and implements a statewide electronic filing system, the secretary of state shall adopt rules that:

(a) provide procedures for entering data;

(b) provide security and protection of information in the system and monitor the data base and other components of the system to ensure that unauthorized entry is precluded;

(c) require standardized information for entry into the system;

(d) prescribe an identification procedure for a person filing records or other documents or otherwise accessing the system;

(e) require each individual who is required to sign a document that is filed electronically to be specifically identified as acknowledging the document and giving assent to the electronic filing through an identification procedure unique to that individual;

(f) prescribe a procedure for certification of electronic filings by the secretary of state; and

(g) prescribe a procedure for converting an electronic filing to a paper copy and for certifying the paper copy for a person requesting a paper copy.

(4) In accordance with 2-17-501, the secretary of state shall cooperate with the department of administration in the development of any electronic filing system.

(5) This section may not be construed to affect any requirement that a particular individual or officer of an organization acknowledge a document Any person using an identification procedure in place of a signature or facsimile signature for any electronic filing is subject to the same civil and crimina penalties applicable to a person providing a signature or facsimile signature.

(6) An electronic filing system developed and implemented under this section may be constructed in phases as resources and technology allow.

History: En. Sec. 1, Ch. 291, L. 1997.

2-15-405 through 2-15-410 reserved.

2-15-411. Commissioner of political practices. (1) There is a commissioner of political practices who is appointed as provided in 13-37-102.

(2) The office of the commissioner is attached to the office of the secretary of state for administrative purposes only, as specified in 2-15-121, except that the provisions of subsections (1)(b), (1)(c), (2)(a), (2)(b), (2)(d), (2)(e), and (3)(a) of 2-15-121 do not apply.

History: En. 23-4785 by Sec. 10, Ch. 480, L. 1975; amd. Sec. 62, Ch. 365, L. 1977; amd. Sec. 1, Ch. 461, L. 1977; R.C.M. 1947, 23-4785(part); amd. Sec. 19, I.M. No. 85, approved Nov. 4, 1980.

Cross-References

Powers and duties, Title 13, ch. 37.

2-15-412. Board of state canvassers. The board of state canvassers created in 13-15-502 is allocated to the office of the secretary of state for administrative purposes only as prescribed in 2-15-121.

History: En. 82A-2102 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-2102; amd. Sec. 12, Ch. 184, L. 1979.

Cross-References

Powers and duties, Title 13, ch. 15, part 5.

2-15-413. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. by Code Commissioner, 1979; amd. Sec. 13, Ch. 184, L. 1979.

Part 5

Attorney General

2-15-501. *(Temporary)* **General duties.** It is the duty of the attorney general:

(1) to prosecute or defend all causes in the supreme court in which the state or any officer of the state in the officer's official capacity is a party or in which the state has an interest;

(2) to represent the state in all bankruptcy proceedings in which the state's interest may be affected;

(3) after judgment in any of the causes referred to in subsections (1) and (2), to direct the issuing of a process as may be necessary to carry the judgment into execution;

(4) to keep a register of all cases prosecuted or defended by the attorney general. The register must be open to the inspection of the public during business hours. The attorney general shall deliver the register to the attorney general's successor in office.

(5) to exercise supervisory powers over county attorneys in all matters pertaining to the duties of their offices and from time to time require of them reports as to the condition of public business entrusted to their charge. The supervisory powers granted to the attorney general by this subsection include the power to order and direct county attorneys in all matters pertaining to the duties of their office. The county attorney shall, when ordered or directed by the attorney general, promptly institute and diligently prosecute in the proper court and in the name of the state of Montana any criminal or civil action or special proceeding.

(6) when required by the public service or directed by the governor, to assist the county attorney of any county in the discharge of the county

attorney's duties or to prosecute or defend appropriate cases in which the state or any officer of the state in the officer's official capacity is a party or in which the state has an interest;

(7) to give an opinion in writing, without fee, to the legislature or either house of the legislature, to any state officer, board, or commission, to any county attorney, to the city attorney of any city or town, or to the board of county commissioners of any county of the state when required upon any question of law relating to their respective offices. The attorney general shall give the opinion within 3 months following the date that it is requested unless the attorney general certifies in writing to the requesting party that the question is of sufficient complexity to require additional time. If an opinion issued by the attorney general conflicts with an opinion issued by a city attorney, county attorney, or an attorney employed or retained by any state officer, board, commission, or department, the attorney general's opinion is controlling unless overruled by a state district court or the supreme court.

(8) to discharge the duties of a member of the board of examiners and state board of land commissioners;

(9) to perform all other duties as required by law. *(Terminates June 30, 1999—sec. 1, Ch. 82, L. 1997.)*

2-15-501. *(Effective July 1, 1999)* **General duties.** It is the duty of the attorney general:

(1) to prosecute or defend all causes in the supreme court in which the state or any officer of the state in his official capacity is a party or in which the state has an interest;

(2) after judgment in any of the causes referred to in subsection (1), to direct the issuing of a process as may be necessary to carry the judgment into execution;

(3) to keep a register of all cases prosecuted or defended by him, which must during business hours be open to the inspection of the public. The attorney general must deliver the register to his successor in office.

(4) to exercise supervisory powers over county attorneys in all matters pertaining to the duties of their offices and from time to time require of them reports as to the condition of public business entrusted to their charge. The supervisory powers granted to the attorney general by this subsection include the power to order and direct county attorneys in all matters pertaining to the duties of their office. The county attorney shall, when ordered or directed by the attorney general, promptly institute and diligently prosecute in the proper court and in the name of the state of Montana any criminal or civil action or special proceeding.

(5) when required by the public service or directed by the governor, to assist the county attorney of any county in the discharge of his duties or to prosecute or defend appropriate cases in which the state or any officer of the state in his official capacity is a party or in which the state has an interest;

(6) to give his opinion in writing, without fee, to the legislature or either house of the legislature, to any state officer, board, or commission, to any county attorney, to the city attorney of any city or town, and to the board of county commissioners of any county of the state when required upon any question of law relating to their respective offices. He shall give any such opinion within 3

months following the date it is requested unless he certifies in writing to the requesting party that the question is of sufficient complexity to require additional time. If an opinion issued by the attorney general conflicts with an opinion issued by a city attorney, county attorney, or an attorney employed or retained by any state officer, board, commission, or department, the attorney general's opinion is controlling unless overruled by a state district court or the supreme court.

(7) to discharge the duties of a member of the board of examiners and state board of land commissioners;

(8) to perform all other duties as required by law.

History: (1) thru (12)Ap. p. Sec. 460, Pol. C. 1895; re-en. Sec. 193, Rev. C. 1907; re-en. Sec. 199, R.C.M. 1921; Cal. Pol. C. Sec. 470; re-en. Sec. 199, R.C.M. 1935; amd. Sec. 89, Ch. 199, L. 1965; amd. Sec. 13, Ch. 344, L. 1973; amd. Sec. 1, Ch. 257, L. 1975; amd. Sec. 1, Ch. 118, L. 1977; amd. Sec. 12, Ch. 343, L. 1977; Sec. 82-401, R.C.M. 1947; Ap. p. Sec. 4450, Pol. C. 1895; amd. Sec. 1, p. 76, L. 1899; re-en. Sec. 3052, Rev. C. 1907; re-en. Sec. 4819, R.C.M. 1921; Cal. Pol. C. Sec. 4256; amd. Sec. 1, Ch. 187, L. 1935; re-en. Sec. 4819, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1965; Sec. 16-3101, R.C.M. 1947; (13)En. Sec. 1, Ch. 158, L. 1925; re-en. Sec. 199.1, R.C.M. 1935; Sec. 82-402, R.C.M. 1947; R.C.M. 1947, 16-3101(part), 82-401, 82-402; amd. Sec. 5, Ch. 125, L. 1983; amd. Sec. 1, Ch. 691, L. 1991; amd. Sec. 1, Ch. 196, L. 1995.

Compiler's Comments

Extension of Termination Date: Section 1, Ch. 82, L. 1997, amended sec. 4, Ch. 196, L. 1995, by extending the termination date imposed by Ch. 196 to June 30, 1999. Effective June 30, 1997.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.; 2-16-211.

Impeachment, Art. V, sec. 13, Mont. Const.; Title 5, ch. 5, part 4.

Election, Art. VI, sec. 2, Mont. Const.

Qualifications for office, Art. VI, sec. 3, Mont. Const.

Duties, Art. VI, sec. 4, Mont. Const.

Vacancy in office — how filled, Art. VI, sec. 6, Mont. Const.

Board of Land Commissioners, Art. X, sec. 4, Mont. Const.; 77-1-201.

Opinions published in Administrative Register, 2-4-312.

Legal assistance for administrative hearings, 2-4-611.

Appointment of member of Reserved Water Rights Compact Commission, 2-15-212.

Board of Examiners, 2-15-1007.

Department of Justice, 2-15-2001; Title 44.

Salary, 2-16-405.

County Attorneys generally, 7-4-2716.

Contract actions against state — service and duties, 18-1-412, 18-1-413.

Appointment of railroad special peace officers, Title 44, ch. 4, part 9.

Duty of Attorney General with regard to crime victims, 46-24-103, 46-24-207.

2-15-502. Qualification of assistants. Each assistant attorney general must be duly licensed to practice law in the state of Montana at the time of his appointment.

History: En. Sec. 2, p. 96, L. 1901; en. Sec. 2, Ch. 13, L. 1907; Sec. 197, Rev. C. 1907; re-en. Sec. 203, R.C.M. 1921; re-en. Sec. 203, R.C.M. 1935; R.C.M. 1947, 82-406.

Cross-References

Admission to Bar of Montana — Supreme Court, Art. VII, sec. 2, Mont. Const.; Title 37, ch. 61, part 1.

Deputies and assistants, Title 2, ch. 16, part 3.

Part 6
State Auditor

2-15-601. State auditor. There is a state auditor as provided in Article VI, section 1, of the Montana constitution.

History: En. by Code Commissioner, 1979.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.; 2-16-211.

Impeachment, Art. V, sec. 13, Mont. Const.; Title 5, ch. 5, part 4.

Election, Art. VI, sec. 2, Mont. Const.

Qualifications for office, Art. VI, sec. 3, Mont. Const.

Vacancy in office — how filled, Art. VI, sec. 6, Mont. Const.; 2-16-505.

Ex officio Securities Commissioner, 2-15-1901.

Ex officio Insurance Commissioner, 2-15-1903.

Board of Hail Insurance — member, 2-15-3003.

Salary, 2-16-405.

Inability to perform office, 2-16-504.

State personnel law — not applicable to staff, 2-18-103, 2-18-104.

2-15-602. Deputy state auditor. (1) The state auditor shall appoint a deputy who in the absence of the principal or in the case of vacancy in his office shall perform all the duties of office until such disability be removed or vacancy be filled.

(2) Such deputy shall subscribe, take, and file the oath of office provided by law for other state officers before entering upon the performance of his duties.

History: En. Sec. 1, Ch. 86, L. 1903; re-en. Sec. 143, Rev. C. 1907; re-en. Sec. 122, R.C.M. 1921; re-en. Sec. 122, R.C.M. 1935; amd. Sec. 1, Ch. 181, L. 1947; amd. Sec. 1, Ch. 8, L. 1949; amd. Sec. 48, Ch. 177, L. 1965; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 82-601(part).

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.; 2-16-211; 2-16-212; 2-16-302.

State deputies generally, Title 2, ch. 16, part 3.

Vacancy in office and filling unexpired term, 2-16-501, 2-16-505.

Powers and duties of officer filling unexpired term, 2-16-507.

Part 7

Superintendent of Public Instruction

2-15-701. Superintendent of public instruction. There is a superintendent of public instruction as provided in Article VI, section 1, of the Montana constitution. The election, qualifications, and term of office of the superintendent are provided for in Title 20, chapter 3.

History: En. by Code Commissioner, 1979.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.; 2-16-211.

Impeachment, Art. V, sec. 13, Mont. Const.; Title 5, ch. 5, part 4.

Election, Art. VI, sec. 2, Mont. Const.

Qualifications for office, Art. VI, sec. 3, Mont. Const.

Vacancy in office — how filled, Art. VI, sec. 6, Mont. Const.

Member of Board of Land Commissioners, Art. X, sec. 4, Mont. Const.; 77-1-201.

State Board of Education — established, Art. X, sec. 9, Mont. Const.; 2-15-1501.

Ex officio member of Board of Regents, Art. X, sec. 9, Mont. Const.; 2-15-1505.

Ex officio member of Board of Public Education, Art. X, sec. 9, Mont. Const.; 2-15-1507.

Salary, 2-16-405.

Inability to perform office, 2-16-504.

Powers and duties, Title 20, ch. 3, part 1.

Parts 8 and 9 reserved

Part 10
Department of Administration

2-15-1001. Department of administration — head. There is created a department of administration. The department head is a director of administration appointed by the governor in accordance with 2-15-111.

History: En. 82A-201 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-201.

Cross-References

State property management, Title 2, ch. 17.

Public employees' compensation, Title 2, ch. 18.

State Finance, Title 17.

Public Contracts, Title 18.

Public Retirement Systems, Title 19.

Building construction standards, Title 50, ch. 60.

2-15-1002. Ex officio state treasurer. The director of the department of administration shall serve as ex officio state treasurer.

History: En. Sec. 1, Ch. 136, L. 1973; amd. Sec. 1, Ch. 468, L. 1977; R.C.M. 1947, 82A-214.

Cross-References

Constitutional finance mandates, Art. VIII, sec. 8, 9, 11, and 12, Mont. Const.

State Finance, Title 17.

General fiscal duties of State Treasurer, 17-1-111.

2-15-1003 and 2-15-1004 reserved.

2-15-1005. Repealed. Sec. 18, Ch. 581, L. 1987.

History: En. 82A-204 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 90, Ch. 326, L. 1974; R.C.M. 1947, 82A-204(1) thru (3), (5); amd. Sec. 1, Ch. 365, L. 1979; amd. Sec. 1, Ch. 63, L. 1985; amd. Sec. 1, Ch. 183, L. 1985.

2-15-1006. Repealed. Sec. 4, Ch. 239, L. 1989.

History: En. 82A-206 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 91, Ch. 326, L. 1974; R.C.M. 1947, 82A-206.

2-15-1007. Board of examiners — allocation. (1) The governor, secretary of state, and attorney general constitute a board of examiners.

(2) The meetings of the board are held at the seat of government on the third Monday in each month and such other times as the president may call it together.

(3) The governor is the president and the secretary of state is the secretary of said board, and in the absence of either, an officer pro tempore may be elected from their number.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1)En. Sec. 232 to 253 were enacted as Sections 1 to 21, pp. 183 to 187, L. 1891; re-en. Secs. 680 to 701, Pol. C. 1895; appearing as Secs. 226 to 247, Rev. C. 1907; re-en. Sec. 232, R.C.M. 1921; Cal. Pol. C. Secs. 654-685; re-en. Sec. 232, R.C.M. 1935; amd. Sec. 7, Ch. 97, L. 1961; Sec. 82-1101, R.C.M. 1947; (2), (3)En. Sec. 227, Rev. C. 1907; re-en. Sec. 233, R.C.M. 1921; re-en. Sec. 233, R.C.M. 1935; Sec. 82-1102, R.C.M. 1947; (4)En. 82A-207 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 92, Ch. 326, L. 1974; amd. Sec. 14, Ch. 343, L. 1977; Sec. 82A-207, R.C.M. 1947; R.C.M. 1947, 82-1101(part), 82-1102, 82A-207.

Cross-References

State building energy conservation program, Title 90, ch. 4, part 6.

2-15-1008. Renumbered 2-15-1814. Sec. 11, Ch. 274, L. 1981.

2-15-1009. Public employees' retirement board — terms — allocation. (1) There is a public employees' retirement board.

(2) The board consists of six members appointed by the governor. The members are:

(a) three public employees who are active members of a public retirement system (not more than one of these members may be an employee of the same department);

(b) one retired public employee who is an inactive member of the public employees' retirement system; and

(c) two members at large.

(3) The term of office for each member is 5 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. The board shall hire necessary employees as provided in 19-2-404.

(5) Members of the board must be compensated and receive travel expenses as provided for in 2-15-124.

History: En. 82A-210 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 9, Ch. 190, L. 1974; amd. Sec. 94, Ch. 326, L. 1974; amd. Sec. 3, Ch. 132, L. 1977; amd. Sec. 22, Ch. 453, L. 1977; R.C.M. 1947, 82A-210; amd. Sec. 1, Ch. 117, L. 1983; amd. Sec. 2, Ch. 650, L. 1985; amd. Sec. 2, Ch. 532, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 532 in (4) inserted second sentence requiring the hiring of necessary employees; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Public employees' retirement system, Title 19, ch. 3.

Judges' retirement system, Title 19, ch. 5.

Highway patrol officers' retirement, Title 19, ch. 6.

Sheriffs' retirement system, Title 19, ch. 7.

Game Wardens' and Peace Officers' retirement system, Title 19, ch. 8.

Statewide police retirement plan, Title 19, ch. 9.

Volunteer firefighters' compensation, Title 19, ch. 17.

2-15-1010. Teachers' retirement board — terms — allocation — definition. (1) There is a teachers' retirement board.

(2) The board consists of six members appointed by the governor, as follows:

(a) three persons appointed from the teaching profession who, when appointed, are active members of the retirement system. At least one of the three appointees must be actively employed as a public school classroom teacher and shall hold a class 1, 2, or 4 certificate pursuant to 20-4-106.

(b) two persons appointed as representatives of the public;

(c) one member who must be a retired teacher who was a member of the retirement system at the time of retirement.

(3) Each appointed member of the board shall serve a term of 4 years. Each appointed member shall take and subscribe to the oath prescribed by Article III, section 3, of the Montana constitution. The oath must be filed in the office of the secretary of state.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel and 2-15-121(2)(d) does not apply.

(5) As used in this section, "classroom teacher" means a staff member assigned professional activities of instructing pupils in self-contained classes or courses or in classroom situations.

History: En. 82A-212 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 95, Ch. 326, L. 1974; amd. Sec. 1, Ch. 45, L. 1977; R.C.M. 1947, 82A-212; amd. Sec. 1, Ch. 388, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 388 deleted former (2)(a) that read: "the superintendent of public instruction"; at beginning of first sentence of (2)(a) substituted "three" for "two", after "who" inserted "when appointed", and after "are" inserted "active" and inserted second sentence requiring that at least one appointee be a classroom teacher; inserted (5) defining classroom teacher; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.; 2-16-211; 2-16-212.

Teachers' retirement system, Title 19, ch. 20.

2-15-1011. State agency for surplus property. There is a Montana state agency for federal surplus property that is administered by a department designated by the governor. The director of the department may prescribe the duties of personnel needed to carry out the duties of Title 18, chapter 5, part 2.

History: En. Sec. 1, Ch. 136, L. 1953; amd. Sec. 1, Ch. 478, L. 1977; R.C.M. 1947, 82-3101; amd. Sec. 1, Ch. 485, L. 1989.

2-15-1012. Repealed. Sec. 14, Ch. 555, L. 1979.

History: En. Sec. 3, Ch. 438, L. 1973; R.C.M. 1947, 59-1503(1), (2).

2-15-1013. Records committee — composition and meetings. (1) There is a committee to be known as the state records committee composed of representatives of:

(a) the department of administration;
(b) the legislative auditor;
(c) the attorney general;
(d) the secretary of state; and
(e) the Montana historical society.

(2) The representatives are to be designated by the head of the respective agencies, and their appointments shall be submitted in writing to the secretary of state.

(3) The committee shall meet at least quarterly.

(4) Committee members shall serve without additional salary but are entitled to reimbursement for travel expense incurred while engaged in committee activities as provided for in 2-18-501 through 2-18-503. Such expenses shall be paid from the appropriations made for operation of their respective agencies.

History: En. 82-3338, by Sec. 7, Ch. 339, L. 1977; R.C.M. 1947, 82-3338(1), (2), (4); amd. Sec. 1, Ch. 218, L. 1989; amd. Sec. 7, Ch. 378, L. 1991.

Cross-References

Public records management, Title 2, ch. 6, part 2.

2-15-1014. Renumbered 2-15-1707 by Code Commissioner, 1991.

2-15-1015. State tax appeal board. There is a state tax appeal board as provided in Title 15, chapter 2.

History: En. by Code Commissioner, 1979.

Cross-References

Tax appeals, Art. VIII, sec. 7, Mont. Const.

2-15-1016. State employee group benefits advisory council — composition. (1) The department shall create a state employee group benefits advisory council under 2-15-122.

(2) The members of the advisory council must be selected from a diverse group in order to adequately represent the interests of state employees and retirees.

(3) One member of the advisory council must be a retired state employee.

(4) Each labor organization, as defined in 39-31-103, representing more than 1,000 employees of the state of Montana is entitled to one representative on the advisory council.

History: En. Sec. 3, Ch. 555, L. 1979; amd. Sec. 1, Ch. 188, L. 1987; amd. Sec. 1, Ch. 426, L. 1991.

Cross-References

State employees' group insurance, Title 2, ch. 18, part 8.

2-15-1017. Publishing policy committee. (1) There is a publishing policy committee.

(2) The committee consists of the budget director, the director of administration, and a director of a state department designated by the governor.

History: En. Sec. 3, Ch. 646, L. 1979.

Cross-References

Control of state printing, Title 18, ch. 7, part 3.

2-15-1018. Renumbered 2-15-1514(2) by Code Commissioner, 1985.

2-15-1019. Board of directors of state compensation insurance fund. (1) There is a board of directors of the state compensation insurance fund.

(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may employ its own staff.

(3) The board may provide for its own office space and the office space of the state fund.

(4) The board consists of seven members appointed by the governor. The executive director of the state fund is an ex officio nonvoting member.

(5) At least four of the seven members must represent state fund policyholders and may be employees of state fund policyholders. At least four members of the board shall represent private, for-profit enterprises. One of the seven members may be a licensed insurance producer. A member of the board may not:

(a) except for the licensed insurance producer member, represent or be an employee of an insurance company that is licensed to transact workers' compensation insurance under compensation plan No. 2; or

(b) be an employee of a self-insured employer under compensation plan No. 1.

(6) A member is appointed for a term of 4 years. The terms of board members must be staggered. A member of the board may serve no more than two 4-year terms. A member shall hold office until a successor is appointed and qualified.

(7) The members must be appointed and compensated in the same manner as members of a quasi-judicial board as provided in 2-15-124, except that the requirement that at least one member be an attorney does not apply.

History: En. Sec. 3, Ch. 613, L. 1989; amd. Sec. 14, Ch. 630, L. 1993; amd. Sec. 1, Ch. 276, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 276 in (4) increased Board membership from five to seven; in (5), in first sentence, substituted "four of the seven members" for "three of the five members", in second sentence substituted "four" for "three", and inserted third sentence authorizing appointment of one licensed insurance producer; at beginning of (5)(a) inserted exception clause; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Constitutional guarantee of legal redress for injury incurred in employment, Art. II, sec. 16, Mont. Const.

Workers' compensation, Title 39, ch. 71.

Workers' compensation state compensation insurance fund, Title 39, ch. 71, part 23.

2-15-1020. Appellate defender commission — duties — rules. (1) There is an appellate defender commission.

(2) The commission consists of five members appointed by the governor as follows:

(a) one district judge nominated by the district judges under a nominating procedure initiated and conducted by the supreme court and certified by the chief justice of the supreme court;

(b) three attorneys. In selecting the attorney appointees, the governor shall consider recommendations submitted by the president of the state bar of Montana, as follows:

(i) at least two attorneys who are experienced in the defense of felonies, at least one of whom has served a minimum of 1 year as a full-time public defender for a governmental agency or a public corporation; and

(ii) at least one attorney who has been licensed to practice law in this state for a minimum of 10 years.

(c) one member of the general public who is not an attorney or a judge, active or retired.

(3) The members shall serve staggered 3-year terms.

(4) The commission is allocated to the department of administration for administrative purposes only pursuant to 2-15-121.

(5) A member of the commission may not while serving a term on the commission serve as a county attorney or a deputy county attorney, the attorney general or an assistant attorney general, the United States district attorney or an assistant United States district attorney, or a law enforcement official.

(6) Members of the commission may not receive a salary for service on the commission but must be reimbursed for expenses, as provided in 2-18-501 through 2-18-503, while actually engaged in the discharge of official duties.

(7) The commission shall make rules for the conduct of its affairs.

(8) The commission shall develop a system of indigent appellate defense services.

(9) The commission shall propose to the supreme court minimum standards to which all trial and appellate public defenders, including locally appointed private counsel, shall conform.

(10) The commission shall compile and keep current a statewide roster of attorneys eligible for appointment by an appropriate court as trial and appellate defense counsel for indigent defendants. The roster must be supplied to all justices and judges in the state.

(11) The commission shall establish qualifications, duties, and priorities for the appellate defender, provided for in 46-8-211, not inconsistent with those established in 46-8-212.

History: **En. Sec. 2, Ch. 781, L. 1991.**

Part 11

Department of Community Affairs (Abolished. Sec. 6, Ch. 274, L. 1981)

2-15-1101. Repealed. Sec. 22, Ch. 274, L. 1981.

History: **En. 82A-901 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 213, L. 1975; R.C.M. 1947, 82A-901.**

2-15-1102. Renumbered 2-15-1811. Sec. 12, Ch. 274, L. 1981.

2-15-1103. Renumbered 2-15-1812. Sec. 12, Ch. 274, L. 1981.

2-15-1104. Renumbered 2-15-1821. Sec. 12, Ch. 274, L. 1981.

2-15-1105 through 2-15-1110 reserved.

2-15-1111. Renumbered 2-15-217. Sec. 2, Ch. 52, L. 1995.

2-15-1112. Renumbered 90-11-101. Sec. 20, Ch. 274, L. 1981.

2-15-1113. Renumbered 90-11-102. Sec. 20, Ch. 274, L. 1981.

Part 12

Department of Military Affairs

2-15-1201. Department of military affairs — head. There is a department of military affairs. The department head is the adjutant general of the state, who shall be appointed and serve in the same manner as are directors in 2-15-111. In addition, the adjutant general shall have the qualifications as prescribed in 2-15-1202.

History: **En. 82A-1401 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 70, Ch. 94, L. 1974; R.C.M. 1947, 82A-1401.**

Cross-References

Military affairs, Title 10.

2-15-1202. Adjutant general — qualifications — salary. (1) The adjutant general shall:

(a) have the rank of major general;

(b) be selected from the active list of the national guard of this state;

(c) be federally recognized in the rank of lieutenant colonel or higher, immediately preceding his appointment;

(d) have had at least 10 years of service as an officer of the active national guard of this state during the 15 years immediately preceding his appointment.

(2) A salary may not be paid to the adjutant general by the state when he is on extended active duty in federal service or is receiving pay as a civilian employee of the federal government.

(3) If, by reason of call or draft of officers of the Montana national guard into federal service, there is no officer having the qualifications as set forth in this section for adjutant general, then any officer of the national guard may be appointed as acting adjutant general.

History: **En. 82A-1405 by Sec. 71, Ch. 94, L. 1974; R.C.M. 1947, 82A-1405.**

2-15-1203. Assistant adjutant generals. (1) The adjutant general shall appoint, with the approval of the governor, an assistant adjutant general for the army national guard to be selected from the active list of the army national guard and an assistant adjutant general for the air national guard to be selected from the active list of the air national guard.

(2) Each assistant adjutant general shall have the qualifications set forth in 2-15-1202 for appointment as adjutant general. However, he shall have the rank of brigadier general.

History: **En. 82A-1406 by Sec. 72, Ch. 94, L. 1974; R.C.M. 1947, 82A-1406.**

2-15-1204. Division of disaster and emergency services. A division of disaster and emergency services is established in the department of military affairs.

History: **En. 77-2305.1 by Sec. 7, Ch. 335, L. 1977; R.C.M. 1947, 77-2305.1(part(1)).**

Cross-References

Disaster and emergency services, Title 10, ch. 3.

2-15-1205. Board of veterans' affairs. (1) There is a board of veterans' affairs.

(2) The board consists of five members appointed by the governor with the consent of the senate. Not more than one member shall be appointed from a single county. However, a change of residence within the state after appointment does not alter a member's status. All members shall be residents of this state and shall have been honorably discharged from service in the military forces of the United States in any of its wars. A vacancy occurring on the board shall be filled by the governor, subject to the conditions of this subsection.

(3) Each member shall receive compensation and travel expenses as provided for in 37-1-133.

(4) Each member shall serve for a term of 5 years.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

History: **En. 82A-1905 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 46, Ch. 121, L. 1974; R.C.M. 1947, 82A-1905; amd. Sec. 25, Ch. 247, L. 1981; amd. Sec. 4, Ch. 474, L. 1981; MCA 1981, 2-15-2202; redes. 2-15-1205 by Sec. 1, Ch. 271, L. 1983.**

Cross-References

Veterans — special consideration by Legislature authorized, Art. II, sec. 35, Mont. Const.

Veterans, Title 10, ch. 2.

Board — general provisions, Title 10, ch. 2, part 1.

Part 13
Department of Revenue

2-15-1301. Department of revenue — head. There is a department of revenue. The department head is the director of revenue.

History: En. 82A-1801 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 62, Ch. 391, L. 1973; R.C.M. 1947, 82A-1801.

Cross-References

State revenue — taxes, Art. VIII, sec. 1 through 5, Mont. Const.

Severance tax on coal — trust fund, Art. IX, sec. 5, Mont. Const.

Report of revenue estimate to Governor, 2-7-104.

Taxation, Title 15.

2-15-1302. Director of revenue. (1) There is the position of director of revenue.

(2) The director of revenue shall be appointed and serve as provided for directors in 2-15-111.

(3) The director is the chief administrative officer of the department.

History: En. 82A-1804 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 64, Ch. 391, L. 1973; R.C.M. 1947, 82A-1804(part).

2-15-1303 through 2-15-1310 reserved.

2-15-1311. Advisory council for Multistate Tax Compact. The director of revenue shall appoint an advisory council for the purpose of complying with Article VI, section 1(b) of the Multistate Tax Compact. The council shall be appointed in accordance with the provisions of 2-15-122.

History: En. 82A-1803 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 63, Ch. 391, L. 1973; R.C.M. 1947, 82A-1803.

Cross-References

Multistate Tax Compact, Title 15, ch. 1, part 6.

Part 14 reserved

Part 15
Education

2-15-1501. State board of education. The state board of education is created in Article X, section 9, subsection (1) of the Montana constitution and is provided for in Title 20, chapter 2.

History: En. 82A-501 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 4, Ch. 51, L. 1974; R.C.M. 1947, 82A-501.

Cross-References

Education, Title 20.

State Board of Education — generally, Title 20, ch. 2, part 1.

2-15-1502 through 2-15-1504 reserved.

2-15-1505. Board of regents of higher education. The board of regents of higher education created in Article X, section 9, subsection (2), of the Montana constitution consists of seven members appointed by the governor and confirmed by the senate. The governor, superintendent of public instruction, and commissioner of higher education are ex officio nonvoting members of the board of regents.

History: En. Sec. 2, Ch. 344, L. 1973; R.C.M. 1947, 75-5610(2).

Cross-References

Montana University System, Title 20, ch. 25.

Regents' powers and duties, Title 20, ch. 25, part 3.

2-15-1506. Commissioner of higher education. (1) There is a commissioner of higher education who is appointed by the board of regents.

(2) The board of regents shall prescribe the term of the commissioner.

History: En. Sec. 3, Ch. 344, L. 1973; R.C.M. 1947, 75-5611(part).

Cross-References

Duties, compensation, and staff, 20-2-131.

Montana University System, Title 20, ch. 25.

2-15-1507. Board of public education. The board of public education created in Article X, section 9, subsection (3), of the Montana constitution consists of seven members appointed by the governor and confirmed by the senate. The governor, superintendent of public instruction, and commissioner of higher education are ex officio nonvoting members of the board of public education.

History: En. Sec. 2, Ch. 344, L. 1973; R.C.M. 1947, 75-5610(1).

Cross-References

Education, Title 20.

Powers and duties, 20-2-121.

2-15-1508. Appointments to board of public education and board of regents — conditions — vacancy. (1) Appointments to the board of public education and to the board of regents are subject to the following qualifications:

(a) Not more than two may be from one district provided for in 5-1-102.

(b) Not more than four may be affiliated with the same political party.

(c) The terms of members appointed to each board are 7 years except as provided in subsection (3).

(d) When a vacancy occurs, the governor shall appoint a member for the remainder of the term of the incumbent, and the appointment must preserve the balance required by subsections (1)(a) and (1)(b).

(e) A person may not be appointed to concurrent memberships on the board of public education and the board of regents.

(2) An appointed member of either board shall take and subscribe to the constitutional oath of office and file it with the secretary of state before the person may serve as a member of either board.

(3) One seat of the appointed members on the board of regents is reserved for membership by a student appointed by the governor. The student must be registered as a full-time student at a unit of higher education under jurisdiction of the board of regents. The length of term of the student member is determined by the governor and must be for not less than 1 year and not more than 4 years. The provisions of subsections (1)(a) and (1)(b) do not apply to the student member and may not affect the balance of the remaining appointive membership on the board of regents.

History: En. Secs. 2, 11, Ch. 344, L. 1973; R.C.M. 1947, 75-5610(part), 75-5619; amd. Sec. 1, Ch. 52, L. 1993.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.; 2-16-211; 2-16-212.

2-15-1509 and 2-15-1510 reserved.

2-15-1511. Agencies allocated to state board of education. The state historical society, the Montana arts council, and the state library commission are allocated to the state board of education for purposes of planning and coordination. Budget requests to the state for these agencies shall be included with the budget requests of the state board of education; however, the governance, management, and control of the respective agencies shall be vested respectively in the board of trustees of the state historical society, the Montana arts council, and the state library commission.

History: En. 82A-501.1 by Sec. 5, Ch. 51, L. 1974; R.C.M. 1947, 82A-501.1.

Cross-References

State Historical Society, 2-15-1512.
Montana Arts Council, 2-15-1513.
State Library Commission, 2-15-1514.

2-15-1512. Boards and offices associated with state historical society. (1) (a) There is a board of trustees of the state historical society that is created in Title 22, chapter 3.

(b) The composition, method of appointment, terms of office, and qualifications of board members remain as prescribed by law.

(2) (a) There is a preservation review board within the Montana historical society consisting of nine members.

(b) Members must be appointed by the governor in the following manner:

(i) five professional persons recognized in the fields of archaeology, history, paleontology, historic property administration, curation, planning, landscape architecture, conservation, folklore, cultural anthropology, traditional cultural property expertise, architecture, or architectural history. However, no more than two members may be appointed from any one of these fields; and

(ii) four members of the public who represent a broad spectrum of Montana society, who have demonstrated an interest in historic preservation, and whose views reflect the rich cultural heritage of the past as well as the opportunities of the future.

(c) Each member shall serve a 4-year term. A member may be reappointed.

(d) Members must be compensated and receive travel expenses as provided for in 2-15-124.

(3) (a) There is established the historic preservation office within the Montana historical society, to consist of an historic preservation officer and a qualified professional staff.

(b) The historic preservation officer is appointed by the governor from a list of three nominees submitted to the governor by the director of the Montana historical society with the approval of the Montana historical society board of trustees.

(c) The historic preservation officer is supervised by the director of the Montana historical society.

History: (1)En. 82A-507 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 7, Ch. 51, L. 1974; amd. Sec. 1, Ch. 203, L. 1975; amd. Sec. 23, Ch. 453, L. 1977; R.C.M. 1947, 82A-507(1), (2); (2),

(3)En Secs. 1, 3, 6, Ch. 563, L. 1979; amd. Sec. 3, Ch. 650, L. 1985; amd. Sec. 1, Ch. 343, L. 1995.

Cross-References

Preservation of historic items, Art. IX, sec. 4, Mont. Const.

State Historical Society, Title 22, ch. 3, part 1.

Historic Preservation Office, Title 22, ch. 3, part 4.

Preservation Review Board, 22-3-422.

2-15-1513. Montana arts council. (1) There is a Montana arts council which is created in Title 22, chapter 2.

(2) The composition, method of appointment, terms of office, compensation, reimbursement, and qualifications of council members remain as prescribed by law.

History: En. 82A-508 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 8, Ch. 51, L. 1974; R.C.M. 1947, 82A-508.

2-15-1514. State library commission — natural resource data system advisory committee. (1) (a) There is a state library commission which is created in Title 22, chapter 1.

(b) The composition, method of appointment, terms of office, compensation, reimbursement, and qualifications of commission members remain as prescribed by law.

(2) (a) There is a natural resource data system advisory committee consisting of an employee of the legislative services division, of the state library, and of each principal data source agency, appointed by the head of the respective state agency, and by the board of regents of higher education for the Montana university system.

(b) The state library shall provide staff support to the committee, within the limits of the library's available resources.

History: (1)En. 82A-509 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 9, Ch. 51, L. 1974; R.C.M. 1947, 82A-509; (2)En. Sec. 3, Ch. 650, L. 1983; amd. Sec. 1, Ch. 395, L. 1985; Sec. 2-15-1018, MCA 1983; redes. 2-15-1514(2) by Code Commissioner, 1985; amd. Sec. 9, Ch. 545, L. 1995.

Cross-References

Natural resource information system, Title 90, ch. 15.

2-15-1515. Commission on federal higher education programs. (1) There is a commission on federal higher education programs that may be called into existence by the board of regents of higher education from time to time as the need arises. Whenever the commission is called into existence, the board shall request the governor to appoint members pursuant to subsection (2)(b).

(2) The commission consists of:

(a) ex officio, the appointed members of the board of regents of higher education; and

(b) a representative of each accredited private college or university in this state appointed by the governor from the board of trustees of each private college or university upon the request of the board of regents of higher education.

(3) The commission members appointed pursuant to subsection (2)(b) shall serve for the period of existence of the commission; however, such period of service may not exceed 4 years and is contingent upon continued status as a

trustee. If a vacancy occurs in a position held by an individual appointed pursuant to subsection (2)(b), the governor shall appoint a replacement.

(4) The chairman of the board of regents of higher education is chairman of the commission.

(5) The commissioner of higher education is the administrative officer of the commission.

(6) The commission is allocated to the board of regents of higher education for administrative purposes only as provided in 2-15-121.

(7) The commission members are entitled to compensation as provided in 2-15-124(7).

(8) The board of regents of higher education may terminate the commission from time to time when there is no need for its existence.

History: En. 82A-512 by Sec. 3, Ch. 220, L. 1974; R.C.M. 1947, 82A-512; amd. Sec. 1, Ch. 21, L. 1985.

Cross-References

Commission on Federal Higher Education Programs, Title 20, ch. 2, part 4.

2-15-1516. Fertilizer advisory committee. (1) There is a fertilizer advisory committee.

(2) The committee is composed of seven members, appointed jointly by the director of the Montana agricultural experiment station and the director of the Montana cooperative extension service of Montana state university-Bozeman, as follows:

(a) five members involved in agriculture that includes the use of fertilizer in production; and

(b) two members from the fertilizer industry.

(3) The director of the department of agriculture shall serve as an ex officio member.

(4) The members shall serve staggered 5-year terms, except that members shall be initially appointed so that no more than two terms expire in any year.

History: En. Sec. 4, Ch. 397, L. 1971; Sec. 3-1732, R.C.M. 1947; amd. and redes. 82A-513 by Sec. 99, Ch. 218, L. 1974; R.C.M. 1947, 82A-513; amd. Sec. 1, Ch. 197, L. 1985; amd. sec. 36, Ch. 308, L. 1995.

Cross-References

Funding — powers and duties, 80-10-103 through 80-10-106.

2-15-1517. Repealed. Sec. 8, Ch. 21, L. 1985.

History: En. 75-9405 by Sec. 5, Ch. 515, L. 1977; R.C.M. 1947, 75-9405.

2-15-1518. Director of fire services training school. (1) The board of regents shall appoint the director of the fire services training school.

(2) The director may be removed for cause.

(3) The director must have the following qualifications:

(a) a bachelor's degree in a field of study related to fire protection; or

(b) 5 years' experience in an organized training program as an instructor and 7 years' experience as a firefighter or fire combat officer.

History: En. 75-7721 by Sec. 6, Ch. 104, L. 1977; R.C.M. 1947, 75-7721(part); amd. Sec. 1, Ch. 20, L. 1989.

Cross-References

Fire services training school, Title 20, ch. 31.

2-15-1519. Fire services training advisory council. (1) The board of regents shall appoint a fire services training advisory council to work with the director of the fire services training school. The membership of the council shall include the following:

(a) a fire chief;
(b) a volunteer firefighter;
(c) a paid firefighter;
(d) a fire service instructor;
(e) a person involved in fire prevention;
(f) a representative of the insurance industry; and
(g) a professional educator.

(2) The board shall solicit and consider the recommendations of appropriate organizations and associations of fire service personnel in making appointments under subsection (1).

(3) Members shall serve for 4-year terms and may be removed for cause. If a vacancy occurs, a member must be appointed to fill the unexpired term. A member may be reappointed.

(4) A representative of the state fire prevention and investigation program of the department of justice, a fire control officer designated by the director of the department of natural resources and conservation, and the director of the fire services training school are ex officio members of the council.

History: En. 75-7718 by Sec. 3, Ch. 104, L. 1977; R.C.M. 1947, 75-7718; amd. Sec. 1, Ch. 6, L. 1987; amd. Sec. 2, Ch. 20, L. 1989; amd. Sec. 2, Ch. 706, L. 1991; amd. Sec. 7, Ch. 418, L. 1995.

2-15-1520. Student loan advisory council — terms — compensation. (1) There is a student loan advisory council appointed by the board of regents.

(2) The council consists of eight members. Each member must be appointed for a term of 3 years.

(3) Appointments to the council must conform to the following requirements:

(a) One member must be a representative of a private eligible educational institution, as defined in 20-26-1101.

(b) Two members must be representatives of a public eligible educational institution, as defined in 20-26-1101.

(c) Two members must be representatives of approved lenders.

(d) One member must be a full-time student registered at an eligible educational institution, as defined in 20-26-1101.

(e) One member, nonvoting, must be a representative of the office of the commissioner of higher education.

(f) One member must be a representative of the nonprofit corporation designated by the governor as the sole and exclusive nonprofit corporation in the state to provide a student loan acquisition program.

(4) A presiding officer must be selected by the council from its membership at the first meeting of each fiscal year.

(5) Each member of the council is entitled to compensation and reimbursement for travel expenses as provided in 2-15-122(5).

History: En. Sec. 1, Ch. 691, L. 1979; amd. Sec. 34, Ch. 658, L. 1987; amd. Sec. 1, Ch. 308, L. 1995; amd. Sec. 2, Ch. 243, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 243 in (2), in first sentence, substituted "eight members" for "seven members"; in (3)(e), near beginning, inserted "nonvoting"; inserted (3)(f) requiring one Council member to be representative of nonprofit corporation designated by Governor; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Resident student financial assistance — consultation with Council, 20-26-104.

Student loan program — Council duties, 20-26-1104.

2-15-1521. Cultural and aesthetic projects advisory committee — terms and compensation. (1) There is a cultural and aesthetic projects advisory committee.

(2) The committee consists of 16 members, appointed as follows:

(a) eight members appointed by the Montana historical society board of trustees; and

(b) eight members appointed by the Montana arts council.

(3) Members shall hold office for 4 years beginning January 1 following their appointment.

(4) A member may be removed by the appointing authority.

(5) All vacancies shall be filled by the original appointing authority.

(6) The committee shall elect a chairman and vice-chairman.

(7) Members of the committee are entitled to compensation of $25 a day and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day in attendance at a committee meeting.

History: En. Sec. 2, Ch. 99, L. 1983.

Cross-References

Duties of Advisory Committee — cultural and aesthetic projects, Title 22, ch. 2, part 3.

2-15-1522. Certification standards and practices advisory council. (1) There is a certification standards and practices advisory council allocated to the board of public education.

(2) The council consists of seven members appointed by majority vote of the board of public education. The membership of the council must include:

(a) three teachers engaged in classroom teaching, including:

(i) one who teaches within kindergarten through grade 8;

(ii) one who teaches within grades 9 through 12; and

(iii) one additional teacher from any category in subsection (2)(a) or (2)(b);

(b) one person employed as a specialist or K-12 specialist;

(c) one faculty member from an approved teacher education program offered by an accredited teacher education institution;

(d) one person employed as an administrator, with the certification required in 20-4-106(1)(c); and

(e) one school district trustee.

(3) The board of public education shall select and appoint the members by June 1. If a vacancy occurs on the council, the board of public education shall appoint a person from the category of membership, as provided in subsection (2), in which the vacancy has occurred to serve the unexpired term.

(4) Members shall serve staggered 3-year terms and must be appointed so that no more than three appointments expire in any 1 year.

History: En. Sec. 2, Ch. 465, L. 1987; amd. Sec. 1, Ch. 124, L. 1991.

Cross-References

Definitions, 20-4-131.

Meetings and assistance, 20-4-132.

Duties of Council, 20-4-133.

2-15-1523. Ground water assessment steering committee. (1) There is a ground water assessment steering committee consisting of an employee of each of the following state agencies that have responsibility for ground water protection, management, or information. The member must be appointed by the head of the respective state agency:

(a) the department of natural resources and conservation;

(b) the department of environmental quality;

(c) the department of agriculture; and

(d) the Montana state library, natural resource information system.

(2) The ground water assessment steering committee may include representatives of the following agencies and units of government with expertise or management responsibility related to ground water and representatives of the organizations and groups specified in subsection (2)(h), who shall serve as ex officio members:

(a) the legislative services division;

(b) the board of oil and gas conservation;

(c) the Montana bureau of mines and geology;

(d) a unit of the university system, other than the Montana bureau of mines and geology, appointed by the board of regents of higher education for the Montana university system;

(e) a county government, appointed by an organization of Montana counties;

(f) a city, town, or city-county government, appointed by an organization of Montana cities and towns;

(g) each principal federal agency that has responsibility for ground water protection, management, or research, appointed by the Montana head of the respective federal agency; and

(h) one representative of each of the following, appointed by the governor:

(i) agricultural water users;

(ii) industrial water users; and

(iii) a conservation or ecological protection organization.

(3) The ground water assessment steering committee shall elect a presiding officer from its voting members.

(4) The Montana bureau of mines and geology shall provide staff support to the committee.

History: En. Sec. 8, Ch. 769, L. 1991; amd. Sec. 8, Ch. 418, L. 1995; amd. Sec. 10, Ch. 545, L. 1995.

Part 16

Department of Professional and Occupational Licensing (Abolished, Sec. 3, Ch. 274, L. 1981)

2-15-1601. Repealed. Sec. 22, Ch. 274, L. 1981.

History: En. 82A-1601 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1601.

2-15-1602 through 2-15-1604 reserved.

2-15-1605. Renumbered 2-15-1841. Sec. 4, Ch. 274, L. 1981.

2-15-1606. Renumbered 2-15-1842. Sec. 4, Ch. 274, L. 1981.

2-15-1607. Repealed. Sec. 6, Ch. 87, L. 1981.

History: (1) thru (3)En. Sec. 1, p. 48, L. 1901; rep. and re-en. Sec. 1, Ch. 51, L. 1905; re-en. Sec. 1594, Rev. C. 1907; re-en. Sec. 3125, R.C.M. 1921; re-en. Sec. 3125, R.C.M. 1935; Sec. 66-1401, R.C.M. 1947; amd. and redes. 82A-1602.20 by Sec. 140, Ch. 350, L. 1974; Sec. 82A-1602.20, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.20; amd. Sec. 3, Ch. 247, L. 1981.

2-15-1608. Repealed. Sec. 10, Ch. 470, L. 1981.

History: (1), (2)En. 82A-1602.6 by Sec. 356, Ch. 350, L. 1974; amd. Sec. 4, Ch. 176, L. 1977; Sec. 82A-1602.6, R.C.M. 1947; (3)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.6; amd. Sec. 2, Ch. 244, L. 1981; amd. Sec. 4, Ch. 247, L. 1981.

2-15-1609. Renumbered 2-15-1843. Sec. 4, Ch. 274, L. 1981.

2-15-1610. Renumbered 2-15-1844. Sec. 4, Ch. 274, L. 1981.

2-15-1611. Renumbered 2-15-1845. Sec. 4, Ch. 274, L. 1981.

2-15-1612. Renumbered 2-15-1846. Sec. 4, Ch. 274, L. 1981.

2-15-1613. Renumbered 2-15-1847. Sec. 4, Ch. 274, L. 1981.

2-15-1614. Renumbered 2-15-1848. Sec. 4, Ch. 274, L. 1981.

2-15-1615. Renumbered 2-15-1849. Sec. 4, Ch. 274, L. 1981.

2-15-1616. Renumbered 2-15-1850. Sec. 4, Ch. 274, L. 1981.

2-15-1617. Renumbered 2-15-1851. Sec. 4, Ch. 274, L. 1981.

2-15-1618. Renumbered 2-15-1852. Sec. 4, Ch. 274, L. 1981.

2-15-1619. Renumbered 2-15-1853. Sec. 4, Ch. 274, L. 1981.

2-15-1620 through 2-15-1624 reserved.

2-15-1625. Renumbered 2-15-1856. Sec. 4, Ch. 274, L. 1981.

2-15-1626. Renumbered 2-15-1857. Sec. 4, Ch. 274, L. 1981.

2-15-1627. Repealed. Sec. 18, Ch. 79, L. 1983.

History: (1) thru (3)En. Sec. 3, Ch. 302, L. 1967; Sec. 66-2903, R.C.M. 1947; amd. and redes. 82A-1602.14 by Sec. 284, Ch. 350, L. 1974; Sec. 82A-1602.14, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.14; amd. Sec. 17, Ch. 247, L. 1981.

2-15-1628. Renumbered 2-15-1858. Sec. 4, Ch. 274, L. 1981.

2-15-1629 and 2-15-1630 reserved.

2-15-1631. Renumbered 2-15-1861. Sec. 4, Ch. 274, L. 1981.

2-15-1632. Renumbered 2-15-1862. Sec. 4, Ch. 274, L. 1981.

2-15-1633 through 2-15-1640 reserved.

2-15-1641. Renumbered 2-15-1866. Sec. 4, Ch. 274, L. 1981.

2-15-1642. Repealed. Sec. 14, Ch. 497, L. 1979.

History: (1) thru (4)En. 82A-1602.23 by Sec. 360, Ch. 350, L. 1974; amd. Sec. 1, Ch. 378, L. 1977; Sec. 82A-1602.23, R.C.M. 1947; (5)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.23.

2-15-1643. Repealed. Sec. 195, Ch. 575, L. 1981.

History: (1) thru (3)En. Sec. 2, Ch. 105, L. 1931; re-en. Sec. 4139, R.C.M. 1935; Sec. 66-2102, R.C.M. 1947; amd. and redes. 82A-1602.1 by Sec. 194, Ch. 350, L. 1974; Sec. 82A-1602.1, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.1.

2-15-1644. Renumbered 2-15-1867. Sec. 4, Ch. 274, L. 1981.

2-15-1645 through 2-15-1650 reserved.

2-15-1651. Renumbered 2-15-1871. Sec. 4, Ch. 274, L. 1981.

2-15-1652. Renumbered 2-15-1872. Sec. 4, Ch. 274, L. 1981.

2-15-1653. Renumbered 2-15-1873. Sec. 4, Ch. 274, L. 1981.

2-15-1654. Renumbered 2-15-1874. Sec. 4, Ch. 274, L. 1981.

2-15-1655. Renumbered 2-15-1875. Sec. 4, Ch. 274, L. 1981.

2-15-1656. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. 82A-1602.29 by Sec. 1, Ch. 504, L. 1975; R.C.M. 1947, 82A-1602.29(part); amd. Sec. 19, Ch. 184, L. 1979.

2-15-1657 through 2-15-1660 reserved.

2-15-1661. Repealed. Sec. 1, Ch. 322, L. 1981.

History: (1) thru (3)En. 82A-1602.4 by Sec. 355, Ch. 350, L. 1974; Sec. 82A-1602.4, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.4; amd. Sec. 23, Ch. 247, L. 1981.

2-15-1662. Renumbered 2-15-1881. Sec. 4, Ch. 274, L. 1981.

Part 17

Department of Labor and Industry

2-15-1701. Department of labor and industry — head. (1) There is a department of labor and industry. As prescribed in Article XII, section 2, of the Montana constitution, the department head is the commissioner of labor and industry.

(2) The commissioner shall be appointed and serve as provided for directors in 2-15-111.

(3) The commissioner shall receive an annual salary in such amount as may be specified by the legislature in the appropriation to the department of labor and industry.

(4) Before entering on the duties of his office, he must take and subscribe to the oath of office prescribed by the Montana constitution.

History: (1)En. 82A-1001 by Sec. 1, Ch. 272, L. 1971; Sec. 82A-1001, R.C.M. 1947; (2) thru (4)Ap. p. Sec. 2, Ch. 177, L. 1951; Sec. 41-1602, R.C.M. 1947; Ap. p. Sec. 3, Ch. 177, L. 1951; amd. Sec. 1, Ch. 27, L. 1957; amd. Sec. 2, Ch. 225, L. 1963; amd. Sec. 20, Ch. 177, L. 1965; amd. Sec. 2, Ch. 237, L. 1967; amd. Sec. 19, Ch. 100, L. 1973; amd. Sec. 6, Ch. 343, L. 1977; Sec. 41-1603, R.C.M. 1947; R.C.M. 1947, 41-1602, 41-1603, 82A-1001(part); amd. Sec. 20, Ch. 184, L. 1979; amd. Sec. 1, Ch. 116, L. 1981.

Cross-References

Constitutional mandate for Department, Art. XII, sec. 2, Mont. Const.

Public works — labor agreements, Title 18, ch. 2, part 4.

Labor, Title 39.

Governmental code of fair practices, Title 49, ch. 3.

2-15-1702. Repealed. Sec. 59, Ch. 613, L. 1989.

History: En. 82A-1004 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 87, Ch. 23, L. 1975; R.C.M. 1947, 82A-1004(part).

2-15-1703. Repealed. Sec. 5, Ch. 349, L. 1981.

History: En. 82A-1006 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1006.

2-15-1704. Board of labor appeals — allocation — composition — function — quasi-judicial. (1) There is a board of labor appeals.

(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(3) The board is composed of three members of the public who are not employees of the state government, appointed by the governor as prescribed in 2-15-124.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124.

History: En. 82A-1008 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1008(1) thru (3), (5).

Cross-References

Function of Board — unemployment insurance, 39-51-310.

2-15-1705. Board of personnel appeals — allocation — composition — vote necessary for decision — quasi-judicial. (1) There is a board of personnel appeals.

(2) The board is allocated to the department of labor and industry for administrative purposes only as prescribed in 2-15-121.

(3) (a) The board consists of five members appointed by the governor as follows:

(i) two members who are full-time management employees in organizations with collective bargaining units or who represent management in collective bargaining activities;

(ii) two members who are full-time employees or elected officials of a labor union or an association recognized by the board; and

(iii) one other member having general labor-management experience, who is the presiding officer.

(b) All members of the board shall serve as impartial decisionmakers and are not appointed to serve the interests of the organizations they represent.

(4) When the presiding officer is unable to participate in a proceeding before the board, the remaining members of the board shall select an individual

who qualifies under subsection (3)(a)(iii) to serve in the place of the presiding officer in that proceeding. The individual selected shall participate in the decisions in that proceeding. There may be only one presiding officer replacement appointed and serving at any one time. The individual selected is entitled to the same compensation and per diem that members of the board receive.

(5) When a board member other than the presiding officer is unable to participate in a proceeding before the board, the remaining members of the board shall select a substitute member who possesses the qualifications described in subsection (3)(a)(i) or (3)(a)(ii), depending on the qualifications of the absent board member. The substitute member shall serve in place of the absent board member and participate in the decisions in that proceeding. A substitute board member is entitled to the same compensation and per diem that members of the board receive.

(6) In all proceedings before the board, a favorable vote of at least a majority of a quorum is sufficient to adopt any resolution, motion, or other decision.

(7) The board is designated a quasi-judicial board for purposes of 2-15-124.

History: En. 82A-1014 by Sec. 15, Ch. 440, L. 1973; amd. Sec. 1, Ch. 47, L. 1974; amd. Sec. 1, Ch. 378, L. 1975; amd. Sec. 1, Ch. 545, L. 1977; R.C.M. 1947, 82A-1014(1) thru (3), (5); amd. Sec. 1, Ch. 26, L. 1981; amd. Sec. 1, Ch. 604, L. 1983; amd. Sec. 1, Ch. 239, L. 1991; amd. Sec. 1, Ch. 90, L. 1995.

Cross-References

State personnel grievances, Title 2, ch. 18, part 10.

Collective bargaining for public employees, Title 39, ch. 31.

Arbitration for firefighters, Title 39, ch. 34.

2-15-1706. Commission for human rights — allocation — quasi-judicial. (1) There is a commission for human rights.

(2) The commission consists of five members appointed by the governor with the consent of the senate.

(3) The commission is designated as a quasi-judicial board for the purposes of 2-15-124 and its members must be compensated and receive travel expenses as provided for in 2-15-124.

(4) The commission is allocated to the department of labor and industry for administrative purposes only as provided in 2-15-121.

History: En. 82A-1015 by Sec. 4, Ch. 283, L. 1974; amd. Sec. 1, Ch. 478, L. 1975; R.C.M. 1947, 82A-1015; amd. Sec. 24, Ch. 247, L. 1981; amd. Sec. 3, Ch. 474, L. 1981; amd. Sec. 4, Ch. 650, L. 1985; amd. Sec. 2, Ch. 467, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 467 at end of (4) deleted "except that the commission may hire its own personnel, may seek and receive private and federal funds in its own name, and may determine all matters of policy concerning the use of its budget. Subsection (2)(d) of 2-15-121 shall not apply for purposes of this section"; and made minor changes in style. Amendment effective July 1, 1997.

Staff Transfer: Section 17, Ch. 467, L. 1997, provided: "The staff of the commission is transferred to the department. The staff is under the direction and control of the commissioner of labor and industry. The staff shall perform functions as directed and in accordance with the express and implied purposes of [this act]. The transfer of staff is subject to 2-15-131 through 2-15-137."

Applicability — Saving Clause: Section 20, Ch. 467, L. 1997, provided: "[This act] does not affect any administrative or judicial proceeding pending or commenced prior to [the effective date of this act] [effective July 1, 1997]. [This act] applies to complaints or proceedings filed on or after [the effective date of this act]."

Cross-References

Illegal discrimination, Title 49, ch. 2.

General powers and duties of Commission, Title 49, ch. 2, part 2.

2-15-1707. Office of workers' compensation judge — allocation — appointment — salary. (1) There is the office of workers' compensation judge. The office is allocated to the department of labor and industry for administrative purposes only as prescribed in 2-15-121.

(2) The governor shall appoint the workers' compensation judge for a term of 6 years in the same manner provided by Title 3, chapter 1, part 10, for the appointment of supreme or district court judges. A vacancy must be filled in the same manner as the original appointment.

(3) To be eligible for workers' compensation judge, a person must:

(a) have the qualifications necessary for district court judges found in Article VII, section 9, of the Montana constitution;

(b) devote full time to the duties of workers' compensation judge and not engage in the private practice of law.

(4) The workers' compensation judge is entitled to the same salary and other emoluments as that of a district judge but must be accorded retirement benefits under the public employees' retirement system.

History: En. 82A-1016 by Sec. 1, Ch. 537, L. 1975; R.C.M. 1947, 82A-1016; amd. Sec. 42, Ch. 613, L. 1989; Sec. 2-15-1014, MCA 1989; redes. 2-15-1707 by Code Commissioner, 1991.

Cross-References

Salaries of District Court Judges, 3-5-211.

Public employees' retirement system, Title 19, ch. 3.

Workers' Compensation Judge, Title 39, ch. 71, part 29.

2-15-1708. Safety employment education and training advisory committee — terms — expenses — duties — meetings. (1) There is a safety employment education and training advisory committee composed of seven members appointed by the commissioner of labor and industry to serve for terms of 3 years.

(2) The committee consists of:

(a) three members representing employees;

(b) three members representing employers; and

(c) one member representing the department of labor and industry.

(3) The committee shall elect its presiding officer.

(4) Before the expiration of the term of a member of the committee, the commissioner shall appoint a successor. A member may be reappointed. The commissioner shall make an appointment to fill a vacancy.

(5) The members of the committee serve without compensation but are entitled to travel expenses as provided in 2-18-501.

(6) The commissioner shall prescribe the committee's duties, including but not limited to recommending to the commissioner methods by which the department may:

(a) implement safety education in secondary schools and vocational-technical programs;

(b) facilitate the implementation of employer safety programs; and

(c) universally increase safety awareness in the workplace.

(7) The committee shall meet at least once every 3 months at a place and time determined by the committee and shall meet at other times and places determined by a majority of the members of the committee or the presiding officer of the committee. Four members of the committee constitute a quorum

for the transaction of business, but the department member may not be counted to determine a quorum.

History: En. Sec. 8, Ch. 295, L. 1993.

Cross-References

Montana Safety Culture Act, Title 39, ch. 71, part 15.

2-15-1709. Workers' compensation regulation advisory council. (1) There is created a workers' compensation regulation advisory council pursuant to 2-15-122 to review the state's workers' compensation regulatory system and make recommendations to the governor regarding:

(a) appropriate regulatory goals;

(b) necessary regulatory activities to meet identified goals; and

(c) appropriate and equitable funding levels and funding mechanisms to meet identified goals.

(2) The council must comprise a broad spectrum of parties who have a direct interest in workers' compensation issues and must include but is not limited to representatives of:

(a) workers' compensation insurers;

(b) insured and self-insured employers;

(c) organized labor;

(d) the Montana chamber of commerce;

(e) the Montana hospital association;

(f) the Montana medical association;

(g) the department of labor and industry;

(h) the Montana senate;

(i) the Montana house of representatives;

(j) the public.

(3) The council shall seek broad input for their review, including but not limited to information regarding Montana's current regulations, national benchmarks, and other state regulatory schemes.

History: En. Sec. 4, Ch. 385, L. 1997.

Compiler's Comments

Required Report: Section 5, Ch. 385, L. 1997, provided: "For purposes of fees assessed on or after July 1, 1999, each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, shall file on March 31, 1999, in the form and containing the information required by the department of labor and industry a report of paid losses." (Terminates June 30, 1999—sec. 8, Ch. 385, L. 1997.)

Part 18
Department of Commerce

2-15-1801. Department of commerce — head. There is a department of commerce. The department head is a director of commerce appointed by the governor in accordance with 2-15-111.

History: En. 82A-401 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 141, Ch. 431, L. 1975; R.C.M. 1947, 82A-401; amd. Sec. 2, Ch. 274, L. 1981.

Cross-References

Unfair trade practices and consumer protection, Art. XIII, sec. 1(2), Mont. Const.; Title 30, ch. 14.

Trade and Commerce, Title 30.

Weights, measures, and standards — specific powers of Commerce Department — rules, 30-12-202.

Consumer reporting agencies, Title 31, ch. 3, part 1.

Financial Institutions, Title 32.

Banks and trust companies — examination and supervision, 32-1-211.

Identification and acquisition of railroad rights-of-way by Department, 60-11-111.

2-15-1802. Renumbered 2-15-3105. Sec. 9, Ch. 333, L. 1995.

2-15-1803. State banking board — composition — allocation. (1) There is a state banking board.

(2) The board is composed of six members. The members of the board must be appointed with consideration given banks of small, medium, and large size and to geographical distribution. Two of the six members must be active officers in state banks of Montana; one must be an active officer of a national bank doing business in Montana; and three must be members of the public, none of whom is an officer, director, or shareholder of any state or national bank. The board shall elect a presiding officer from its members.

(3) The members must be appointed by the governor, with the consent of the senate, for terms of 3 years. Vacancies must be filled by appointment for the unexpired term. A member may not serve more than two consecutive terms.

(4) The board is allocated to the department for administrative purposes only as provided in 2-15-121.

History: En. Sec. 1, Ch. 420, L. 1973; Sec. 5-607, R.C.M. 1947; amd. and redes. 82A-407 by Sec. 21, Ch. 431, L. 1975; R.C.M. 1947, 82A-407; amd. Sec. 3, Ch. 321, L. 1979; amd. Sec. 14, Ch. 274, L. 1981; amd. Sec. 3, Ch. 52, L. 1993; amd. Sec. 1, Ch. 395, L. 1993.

Cross-References

Financial Institutions, Title 32.

Functions of Board, Title 32, ch. 1, part 2.

2-15-1804. Proprietary postsecondary educational advisory council. (1) There is created a proprietary postsecondary educational advisory council.

(2) The council is composed of five members appointed by the governor and two ex officio members. Two members shall represent the Montana proprietary school association, one member shall represent the advisory council for vocational education, one member shall represent the Montana personnel and guidance association, and one member from the public at large who has no connection with education. The ex officio members shall be the superintendent of public instruction and the commissioner of higher education.

(3) Members of the council shall serve for 5 years.

History: En. 75-9205 by Sec. 5, Ch. 296, L. 1974; R.C.M. 1947, 75-9205(part).

2-15-1805. Repealed. Sec. 18, Ch. 581, L. 1987.

History: En. Sec. 17, Ch. 677, Sec. 27, Ch. 686, and Sec. 29, Ch. 701, L. 1983.

2-15-1806. Repealed. Sec. 18, Ch. 581, L. 1987.

History: En. Sec. 28, Ch. 686, and Sec. 30, Ch. 701, L. 1983.

2-15-1807. Repealed. Sec. 18, Ch. 581, L. 1987.

History: En. Sec. 18, Ch. 677, L. 1983.

2-15-1808. Board of investments — allocation — composition — quasi-judicial. (1) There is a board of investments within the department of commerce.

(2) Except as otherwise provided in this subsection, the board is allocated to the department for administrative purposes as prescribed in 2-15-121. The board may employ an investment officer, an assistant investment officer, and an executive director who have general responsibility for selection and

management of the board's staff and for direct investment and economic development activities. The investment officer, assistant investment officer, and executive director serve at the pleasure of the board. The board shall prescribe the duties and annual salaries of the investment officer, assistant investment officer, executive director, and three professional staff positions.

(3) The board is composed of nine members appointed by the governor as prescribed in 2-15-124. The members are:

(a) one member from the public employees' retirement board provided for in 2-15-1009 and one member from the teachers' retirement board provided for in 2-15-1010. If either member ceases to be a member of the retirement board, the position of that member on the board of investments is vacant, and the governor shall fill the vacancy in accordance with 2-15-124.

(b) seven members who will provide a balance of professional expertise and public interest and accountability and who are informed and experienced in the subject of investments and who are representative of:

(i) the financial community;
(ii) small business;
(iii) agriculture; and
(iv) labor.

(4) The board is designated as a quasi-judicial board for the purposes of 2-15-124.

History: En. Sec. 1, Ch. 581, L. 1987.

Cross-References

Investment of public funds, Art. VIII, sec. 13, Mont. Const.

Economic development bonds — issuance, Title 17, ch. 5, part 15.

Municipal Finance Consolidation Act, Title 17, ch. 5, part 16.

Unified investments, Title 17, ch. 6, part 2.

Montana Capital Company Act, Title 90, ch. 8.

2-15-1809 reserved.

2-15-1810. Repealed. Sec. 24, Ch. 316, L. 1989.

History: En. Sec. 3, Ch. 701, L. 1985.

2-15-1811. Board of county printing — composition — allocation — compensation. (1) There is a board of county printing.

(2) The board consists of five members appointed by the governor with the consent of the senate for terms of 2 years.

(3) The members are:

(a) two members of the printing industry;
(b) two county commissioners;
(c) one member of the general public.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(5) The members of the board shall be compensated and reimbursed in the same manner and amount as provided for in 37-1-133.

History: (1) thru (4)En. 82A-904 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 103, Ch. 348, L. 1974; Sec. 82A-904, R.C.M. 1947; (5)En. Sec. 4, Ch. 280, L. 1967; amd. Sec. 59, Ch. 348, L. 1974; Sec. 16-1228, R.C.M. 1947; R.C.M. 1947, 16-1228, 82A-904; amd. Sec. 1, Ch. 247, L. 1981; MCA 1979, 2-15-1102; redes. 2-15-1811 by Sec. 12, Ch. 274, L. 1981; amd. Sec. 2, Ch. 474, L. 1981.

Cross-References

County printing, Title 7, ch. 5, part 24.

2-15-1812. Renumbered 2-15-2506. Sec. 17, Ch. 512, L. 1991.

2-15-1813. Renumbered 2-15-217. Sec. 2, Ch. 52, L. 1995.

2-15-1814. Board of housing — allocation — composition — quasi-judicial. (1) There is a board of housing.

(2) The board consists of seven members appointed by the governor as provided in 2-15-124. The members shall be informed and experienced in housing, economics, or finance.

(3) The board shall elect a chairman and other necessary officers.

(4) The board is designated a quasi-judicial board for purposes of 2-15-124.

(5) The board is allocated to the department of commerce for administrative purposes only as provided in 2-15-121.

(6) In compliance with the state pay plan, the department shall provide all staff and services to the board as are determined by the board in conjunction with the department to be necessary for the purposes of carrying out the board's programs. The department shall assess the board for reasonable costs.

(7) A member of the board shall not be deemed to have a conflict of interest under the provisions of 2-2-201 merely because the member is a stockholder, officer, or employee of a lending institution who may participate in the board's programs.

History: En. 82A-224 by Sec. 2, Ch. 163, L. 1977; R.C.M. 1947, 82A-224; amd. Sec. 3, Ch. 143, L. 1979; MCA 1979, 2-15-1008; redes. 2-15-1814 by Sec. 11, Ch. 274, L. 1981; amd. Sec. 12, Ch. 274, L. 1981.

Cross-References

State pay plan, Title 2, ch. 18, part 3.

Financing of housing, Title 90, ch. 6, part 1.

2-15-1815. Montana health facility authority. (1) There is created a public body corporate designated as the Montana health facility authority. This authority is constituted a public instrumentality, and its exercise of the powers conferred by Title 90, chapter 7, shall be considered and held to be the performance of an essential public function.

(2) The authority consists of seven members appointed by the governor as prescribed in 2-15-124. The board must be broadly representative of the state, seeking to balance professional expertise and public accountability.

(3) The board is designated as a quasi-judicial board for the purposes of 2-15-124.

(4) The board is allocated to the department of commerce for administrative purposes only as provided in 2-15-121. The board has authority over its own personnel as provided in 90-7-203.

History: En. Sec. 1, Ch. 703, L. 1983.

Cross-References

Health facility development — duties of Authority, Title 90, ch. 7.

2-15-1816. Tourism advisory council. (1) There is created a tourism advisory council.

(2) The council is composed of not less than 12 members appointed by the governor from Montana's private sector travel industry and includes at least one member from Indian tribal governments, with representation from each

tourism region initially established by executive order of the governor and as may be modified by the council under subsection (5).

(3) Members of the council shall serve staggered 3-year terms, subject to replacement at the discretion of the governor. The governor shall designate four of the initial members to serve 1-year terms and four of the initial members to serve 2-year terms.

(4) The council shall:

(a) oversee distribution of funds to regional nonprofit tourism corporations for tourism promotion and to nonprofit convention and visitors bureaus in accordance with Title 15, chapter 65, part 1, and this section;

(b) advise the department of commerce relative to tourism promotion;

(c) advise the governor on significant matters relative to Montana's travel industry;

(d) prescribe allowable administrative expenses for which accommodation tax proceeds may be used by regional nonprofit tourism corporations and nonprofit convention and visitors bureaus;

(e) direct the university system regarding Montana travel research;

(f) approve all travel research programs prior to their being undertaken; and

(g) encourage regional nonprofit tourism corporations to promote tourist activities on Indian reservations in their regions.

(5) The council may modify the tourism regions established by executive order of the governor.

(6) The department of commerce shall adopt such rules as may be necessary to implement and administer Title 15, chapter 65, part 1, and this section.

History: En. Secs. 9, 12, Ch. 607, L. 1987; amd. Sec. 1, Ch. 301, L. 1991.

Cross-References

Adoption of administrative rules, Title 2, ch. 4, part 3.

Lodging facility use tax — rulemaking authority of Department of Revenue, 15-65-102.

2-15-1817. Renumbered 2-15-3015 by Code Commissioner, 1989.

2-15-1818. *(Temporary)* **Montana board of science and technology development — allocation — composition — quasi-judicial powers.** (1) There is a Montana board of science and technology development. The board is allocated to the department of commerce. The department shall select, prescribe the duties for, and supervise staff to administer board activities.

(2) The board consists of nine members appointed by the governor as prescribed in 2-15-124.

(3) In making appointments to the board, the governor shall consider people with extensive interest and experience in science and technology and the application of such interest and experience to economic development in Montana.

(4) The membership of the board must include:

(a) at least three members with knowledge of early stage financing of private businesses;

(b) at least one member with expertise in applied technology development; and

(c) at least five members from the private sector.

(5) The board is designated a quasi-judicial board for purposes of 2-15-124.

(6) A member of the board appointed after May 7, 1997, may not be an officer or an employee of an entity that has received funding from the board. *(Repealed effective July 1, 1999—secs. 13, 16(1), Ch. 549, L. 1997.)*

History: En. Sec. 16, Ch. 316, L. 1989; amd. Sec. 1, Ch. 594, L. 1991; amd. Sec. 1, Ch. 549, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 549 inserted (6) relating to appointing officers or employees of entities that receive funding from Board. Amendment effective May 7, 1997.

Cross-References

Montana Science and Technology Financing Act, Title 90, ch. 3.

2-15-1819 and 2-15-1820 reserved.

2-15-1821. Coal board — allocation — composition. (1) There is a coal board composed of seven members.

(2) The coal board is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

(3) The governor shall appoint a seven-member coal board, as provided under 2-15-124.

(4) (a) The members of the coal board are selected as follows:

(i) two from the impact areas;

(ii) two with expertise in education; and

(iii) at least one but not more than two from each district provided for in 5-1-102.

(b) The governor shall further, in making these appointments, consider people from these fields:

(i) business;

(ii) engineering;

(iii) public administration; and

(iv) planning.

History: En. 50-1804 by Sec. 5, Ch. 502, L. 1975; amd. Sec. 6, Ch. 540, L. 1977; R.C.M. 1947, 50-1804; MCA 1979, 2-15-1104; amd. and redes. 2-15-1821 by Sec. 12, Ch. 274, L. 1981; amd. Sec. 4, Ch. 52, L. 1993.

Cross-References

Coal impacts — evaluation and abatement funding, Title 90, ch. 6, part 2.

2-15-1822. Hard-rock mining impact board. (1) There is a hard-rock mining impact board.

(2) The hard-rock mining impact board is a five-member board.

(3) The hard-rock mining impact board shall include among its members:

(a) three persons who, when appointed to the board, reside in an area impacted or expected to be impacted by large-scale mineral development;

(b) at least one person from each district provided for in 5-1-102;

(c) a representative of the hard-rock mining industry;

(d) a representative of a major financial institution in Montana;

(e) a person who, when appointed to the board, is an elected school district trustee;

(f) a person who, when appointed to the board, is an elected county commissioner;

(g) a member of the public-at-large.

(4) The hard-rock mining impact board is a quasi-judicial board subject to the provisions of 2-15-124 except that one of the members need not be an attorney licensed to practice law in this state, and the board shall elect a presiding officer from among its members.

History: En. Sec. 1, Ch. 617, L. 1981; amd. Sec. 1, Ch. 582, L. 1985; amd. Sec. 5, Ch. 52, L. 1993.

Cross-References

Hard-rock mining impacts, Title 90, ch. 6, parts 3 and 4.

2-15-1823 through 2-15-1839 reserved.

2-15-1840. Alternative health care board — composition — terms — allocation. (1) There is an alternative health care board.

(2) The board consists of six members appointed by the governor with the consent of the senate. The members are:

(a) two persons from each of the health care professions regulated by the board who have been actively engaged in the practice of their respective professions for at least 3 years preceding appointment to the board;

(b) one public member who is not a member of a profession regulated by the board; and

(c) one member who is a Montana physician whose practice includes obstetrics.

(3) The members must have been residents of this state for at least 3 years before appointment to the board.

(4) All members shall serve staggered 4-year terms. A member may not be appointed for more than two consecutive terms. The governor may remove a member from the board for neglect of a duty required by law, for incompetency, or for unprofessional or dishonorable conduct.

(5) The board is allocated to the department for administrative purposes only, as prescribed in 2-15-121.

(6) The board is designated a quasi-judicial board for the purposes of 2-15-124, except that one member of the board need not be an attorney licensed to practice law in this state.

History: En. Sec. 1, Ch. 524, L. 1991; amd. Sec. 1, Ch. 314, L. 1993.

2-15-1841. Board of medical examiners. (1) There is a Montana state board of medical examiners.

(2) The board consists of 11 members appointed by the governor with the consent of the senate. Appointments made when the legislature is not in session may be confirmed at the next session.

(3) The members are:

(a) five members having the degree of doctor of medicine;

(b) one member having the degree of doctor of osteopathy;

(c) one member who is a licensed podiatrist;

(d) one member who is a licensed nutritionist;

(e) one member who is a licensed physician assistant-certified; and

(f) two members of the general public who are not medical practitioners.

(4) The members having the degree of doctor of medicine may not be from the same county. Each member must be a citizen of the United States. Each member, except for public members, must have been licensed and must have

practiced medicine or dietetics-nutrition in this state for at least 5 years and must have been a resident of this state for at least 5 years.

(5) Members shall serve staggered 4-year terms. A term commences on September 1 of each year of appointment. A member may, upon notice and hearing, be removed by the governor for neglect of duty, incompetence, or unprofessional or dishonorable conduct.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (5)En. Sec. 4, Ch. 338, L. 1969; amd. Sec. 2, Ch. 203, L. 1971; Sec. 66-1013, R.C.M. 1947; amd. and redes. 82A-1602.15 by Sec. 92, Ch. 350, L. 1974; amd. Sec. 1, Ch. 83, L. 1975; Sec. 82A-1602.15, R.C.M. 1947; (6)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 83, L. 1975; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.15; amd. Sec. 15, Ch. 184, L. 1979; amd. Sec. 3, Ch. 243, L. 1981; MCA 1979, 2-15-1605; redes. 2-15-1841 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 1, Ch. 470, L. 1981; amd. Sec. 12, Ch. 529, L. 1987; amd. Sec. 1, Ch. 419, L. 1993; amd. Sec. 1, Ch. 327, L. 1995.

Cross-References

Application of Montana Administrative Procedure Act to licensing, 2-4-631.

Disasters and emergencies — emergency reciprocity for persons licensed out of state, 10-3-204.

General duties of boards, 37-1-131.

Licensure of former criminal offenders, Title 37, ch. 1, part 2.

General provisions relating to health care practitioners, Title 37, ch. 2.

Medicine, Title 37, ch. 3.

Nutritionists, Title 37, ch. 25.

Nondiscrimination in licensing, 49-3-204.

2-15-1842. Board of dentistry. (1) There is a board of dentistry.

(2) The board consists of five dentists, one denturist, two dental hygienists, and two public members, one of whom must be a senior citizen. All members are appointed by the governor with the consent of the senate. Each licensed member must be licensed to practice as a dentist, denturist, or dental hygienist in this state, must have actively practiced in this state for at least 5 continuous years immediately before the member's appointment, and must be actively engaged in practice while serving on the board. Each member must be a resident of this state.

(3) Each member shall serve for a term of 5 years. The governor may remove a member only for neglect or cause.

(4) The governor shall fill any vacancy within 30 days.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. Sec. 1, Ch. 48, L. 1935; re-en. Sec. 3115.1, R.C.M. 1935; Sec. 66-901, R.C.M. 1947; amd. and redes. 82A-1602.9 by Sec. 76, Ch. 350, L. 1974; Sec. 82A-1602.9, R.C.M. 1947; amd. Sec. 1, Ch. 316, L. 1979; (4)En. Sec. 1, Ch. 316, L. 1979; (5)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.9; amd. Sec. 1, Ch. 316, L. 1979; amd. Sec. 1, Ch. 244, L. 1981; amd. Sec. 2, Ch. 247, L. 1981; MCA 1979, 2-15-1606; redes. 2-15-1842 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 3, Ch. 363, L. 1981; amd. Sec. 11, Ch. 575, L. 1981; amd. Sec. 1, Ch. 524, L. 1987; amd. Sec. 1, Ch. 331, L. 1991; amd. Sec. 13, Ch. 481, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 481 near beginning of first sentence in (2), after "dentists," deleted "one of whom shall serve as a nonvoting member" and after "denturist" substituted "two dental hygienists" for "one dental hygienist" and near middle of third sentence, after "appointment", deleted "except as provided in subsection (2)(b)"; deleted (2)(b) that read: "(b) The provision in subsection (2)(a) requiring a licensed member to have actively practiced in this state for at least 5 continuous years immediately before his appointment does not apply to the first denturist appointed to the board"; deleted former second sentence in (3) that read: "Each dentist appointed to the board for a statutory 5-year term shall serve the first year of the term as a nonvoting member of the board"; and made minor changes in style.

Cross-References

Application of Montana Administrative Procedure Act to licensing, 2-4-631.

Disasters and emergencies — emergency reciprocity for persons licensed out of state, 10-3-204.

General duties of boards, 37-1-131.

Licensure of former criminal offenders, Title 37, ch. 1, part 2.

General provisions relating to health care practitioners, Title 37, ch. 2.

Dentistry and dental hygiene, Title 37, ch. 4.

Denturitry, Title 37, ch. 29.

Nondiscrimination in licensing, 49-3-204.

2-15-1843. Board of pharmacy. (1) There is a board of pharmacy.

(2) The board consists of five members appointed by the governor with the consent of the senate. Three members must be licensed pharmacists, and two members must be from the general public.

(a) Each licensed member must have graduated and received the first professional undergraduate degree from the school of pharmacy of the university of Montana-Missoula or from an accredited pharmacy degree program that has been approved by the board. Each licensed member shall have at least 5 consecutive years of practical experience as a pharmacist immediately before his appointment. A licensed member who, during his term of office, ceases to be actively engaged in the practice of pharmacy in this state shall be automatically disqualified from membership on the board.

(b) Each public member of the board must be a resident of the state and may not be or ever have been:

(i) a member of the profession of pharmacy or the spouse of a member of the profession of pharmacy;

(ii) a person having any material financial interest in the providing of pharmacy services; or

(iii) a person who has engaged in any activity directly related to the practice of pharmacy.

(3) Members shall serve staggered 5-year terms. A member may not serve consecutive 5-year terms on the board. A member shall be removed from office by the governor on proof of malfeasance or misfeasance in office, after reasonable notice of charges against him and after a hearing.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. Sec. 643, Pol. C. 1895; re-en. Sec. 1625, Rev. C. 1907; re-en. Sec. 4, Ch. 134, L. 1915; re-en. Sec. 3173, R.C.M. 1921; re-en. Sec. 3173, R.C.M. 1935; amd. Sec. 3, Ch. 175, L. 1939; Sec. 66-1503, R.C.M. 1947; amd. and redes. 82A-1602.21 by Sec. 149, Ch. 350, L. 1974; Sec. 82A-1602.21, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.21; amd. Sec. 3, Ch. 244, L. 1981; amd. Sec. 5, Ch. 247, L. 1981; MCA 1979, 2-15-1609; redes. 2-15-1843 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 3, Ch. 362, L. 1981; amd. Sec. 1, Ch. 379, L. 1981; amd. Sec. 2, Ch. 247, L. 1983; amd. sec. 36, Ch. 308, L. 1995.

Cross-References

Application of Montana Administrative Procedure Act to licensing, 2-4-631.

Disasters and emergencies — emergency reciprocity for persons licensed out of state, 10-3-204.

General duties of boards, 37-1-131.

Licensure of former criminal offenders, Title 37, ch. 1, part 2.

General provisions relating to health care practitioners, Title 37, ch. 2.

Pharmacy, Title 37, ch. 7.

Nondiscrimination in licensing, 49-3-204.

2-15-1844. Board of nursing. (1) There is a board of nursing.

(2) The board consists of nine members appointed by the governor with the consent of the senate. The members are:

(a) four registered professional nurses; at least one such member shall have had at least 5 years in administrative, teaching, or supervisory experience in one or more schools of nursing and at least one such member must be currently engaged in the administration, supervision, or provision of direct client care. Each member shall:

(i) be a graduate of an approved school of nursing;

(ii) be a licensed registered professional nurse in this state;

(iii) have had at least 5 years' experience in nursing following graduation; and

(iv) be currently engaged in the practice of professional nursing and have practiced for at least 5 years.

(b) three practical nurses. Each shall:

(i) be a graduate of a school of practical nursing;

(ii) be a licensed practical nurse in this state;

(iii) have had at least 5 years' experience as a practical nurse; and

(iv) be currently engaged in the practice of practical nursing and have practiced for at least 5 years.

(c) two public members who are not medical practitioners, involved in the practice of nursing or employment of nursing, or administrators of Montana health care facilities.

(3) All members shall have been residents of this state for at least 1 year before appointment and be citizens of the United States.

(4) All members shall serve staggered 4-year terms, and a member may not be appointed for more than two consecutive terms. The governor may remove a member from the board for neglect of a duty required by law or for incompetency or unprofessional or dishonorable conduct.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (4)En. 82A-1602.18 by Sec. 357, Ch. 350, L. 1974; Sec. 82A-1602.18, R.C.M. 1947; (5)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.18; amd. Sec. 6, Ch. 247, L. 1981; amd. Sec. 3, Ch. 248, L. 1981; MCA 1979, 2-15-1610; redes. 2-15-1844 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 1, Ch. 282, L. 1987.

Cross-References

Application of Montana Administrative Procedure Act to licensing, 2-4-631.

Disasters and emergencies — emergency reciprocity for persons licensed out of state, 10-3-204.

General duties of boards, 37-1-131.

Licensure of former criminal offenders, Title 37, ch. 1, part 2.

General provisions relating to health care practitioners, Title 37, ch. 2.

Nursing, Title 37, ch. 8.

Nondiscrimination in licensing, 49-3-204.

2-15-1845. Board of nursing home administrators. (1) There is a board of nursing home administrators.

(2) The board consists of five voting members appointed by the governor with the consent of the senate. No more than two members may be nursing home administrators. One member shall represent the public at large and must be 55 years of age or older at the time of appointment. The other two members must be representatives of professions or institutions concerned with the care of chronically ill and infirm aged patients and may not be from the same profession or have a financial interest in a nursing home.

(3) The director of the department of public health and human services or the director's designee is an ex officio, nonvoting member of the board.

(4) Each appointed member shall serve for a term of 5 years. Any vacancy occurring in the position of an appointive member must be filled by the governor for the unexpired term.

(5) Appointive members may be removed by the governor only for cause.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (5)En. Sec. 2, Ch. 363, L. 1969; amd. Sec. 1, Ch. 434, L. 1973; amd. Sec. 2, Ch. 483, L. 1973; amd. Sec. 1, Ch. 153, L. 1974; Sec. 66-3102, R.C.M. 1947; amd. and redes. 82A-1602.17 by Sec. 306, Ch. 350, L. 1974; amd. Sec. 1, Ch. 95, L. 1975; Sec. 82A-1602.17, R.C.M. 1947; (6)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.17(1) thru (6); amd. Sec. 1, Ch. 163, L. 1979; amd. Sec. 4, Ch. 244, L. 1981; amd. Sec. 7, Ch. 247, L. 1981; MCA 1979, 2-15-1611; redes. 2-15-1845 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 9, Ch. 418, L. 1995; amd. Sec. 12, Ch. 546, L. 1995.

Cross-References

Application of Montana Administrative Procedure Act to licensing, 2-4-631.

Disasters and emergencies — emergency reciprocity for persons licensed out of state, 10-3-204.

General duties of boards, 37-1-131.

Licensure of former criminal offenders, Title 37, ch. 1, part 2.

General provisions relating to health care practitioners, Title 37, ch. 2.

Nursing home administrators, Title 37, ch. 9.

Nondiscrimination in licensing, 49-3-204.

2-15-1846. Board of optometry. (1) There is a board of optometry.

(2) The board consists of four members appointed by the governor with the consent of the senate. Three members must be registered optometrists of this state and actually engaged in the exclusive practice of optometry in this state during their terms of office. One member must be a representative of the public who is not engaged in the practice of optometry.

(3) Members shall serve staggered 4-year terms.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. 82A-1602.19 by Sec. 358, Ch. 350, L. 1974; Sec. 82A-1602.19, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.19; amd. Sec. 1, Ch. 41, L. 1979; amd. Sec. 8, Ch. 247, L. 1981; MCA 1979, 2-15-1612; redes. 2-15-1846 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 3, Ch. 543, L. 1981; amd. Sec. 1, Ch. 121, L. 1993.

Cross-References

Application of Montana Administrative Procedure Act to licensing, 2-4-631.

Disasters and emergencies — emergency reciprocity for persons licensed out of state, 10-3-204.

General duties of boards, 37-1-131.

Licensure of former criminal offenders, Title 37, ch. 1, part 2.

General provisions relating to health care practitioners, Title 37, ch. 2.

Optometry, Title 37, ch. 10.

Nondiscrimination in licensing, 49-3-204.

2-15-1847. Board of chiropractors. (1) There is a board of chiropractors.

(2) The board consists of four members appointed by the governor with the consent of the senate. Three members must be practicing chiropractors of integrity and ability who are residents of this state and who have practiced chiropractic continuously in this state for at least 1 year. No two members may be graduates of the same school or college of chiropractic. One member must be a representative of the public who is not engaged in the practice of chiropractic.

(3) Each member shall serve for a term of 3 years. No member may be appointed for more than two consecutive terms. A member may be removed from office by the governor on sufficient proof of the member's inability or misconduct.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. I.M., Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3138, R.C.M. 1921; re-en. Sec. 3138, R.C.M. 1935; Sec. 66-501, R.C.M. 1947; amd. and redes. 82A-1602.7 by Sec. 45, Ch. 350, L. 1974; amd. Sec. 2, Ch. 579, L. 1977; Sec. 82A-1602.7, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.7; amd. Sec. 3, Ch. 155, L. 1981; amd. Sec. 9, Ch. 247, L. 1981; MCA 1979, 2-15-1613; redes. 2-15-1847 by Sec. 4, Ch. 274, L. 1981.

Cross-References

Application of Montana Administrative Procedure Act to licensing, 2-4-631.

Disasters and emergencies — emergency reciprocity for persons licensed out of state, 10-3-204.

General duties of boards, 37-1-131.

Licensure of former criminal offenders, Title 37, ch. 1, part 2.

General provisions relating to health care practitioners, Title 37, ch. 2.

Chiropractic, Title 37, ch. 12.

Nondiscrimination in licensing, 49-3-204.

2-15-1848. Board of radiologic technologists. (1) There is a board of radiologic technologists.

(2) The board consists of seven members appointed by the governor with the consent of the senate:

(a) one member shall be a radiologist licensed to practice medicine in Montana;

(b) one member shall be a physician licensed to practice medicine in Montana who employs at least one person granted a permit issued by the board pursuant to 37-14-306;

(c) one member shall be a person granted a permit issued by the board pursuant to 37-14-306;

(d) one member shall be a public member; and

(e) three members shall be radiologic technologists registered with the American registry of radiologic technologists (ARRT) who, with the exception of the first appointed members, are licensed radiologic technologists.

(3) Vacancies in unexpired terms shall be filled for the remainder of the term.

(4) Each member shall serve for a term of 3 years.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: En. 82A-1602.28 by Sec. 3, Ch. 336, L. 1975; R.C.M. 1947, 82A-1602.28(part); amd. Sec. 16, Ch. 184, L. 1979; amd. Sec. 10, Ch. 247, L. 1981; MCA 1979, 2-15-1614; redes. 2-15-1848 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 1, Ch. 296, L. 1981; amd. Sec. 1, Ch. 166, L. 1985.

Cross-References

Application of Montana Administrative Procedure Act to licensing, 2-4-631.

Disasters and emergencies — emergency reciprocity for persons licensed out of state, 10-3-204.

General duties of boards, 37-1-131.

Licensure of former criminal offenders, Title 37, ch. 1, part 2.

General provisions relating to health care practitioners, Title 37, ch. 2.

Radiologic technologists, Title 37, ch. 14.

Nondiscrimination in licensing, 49-3-204.

2-15-1849. Board of speech-language pathologists and audiologists. (1) There is a board of speech-language pathologists and audiologists.

(2) The board consists of five members who shall:

(a) be appointed by the governor with the consent of the senate;

(b) have been residents of this state for at least 1 year immediately preceding their appointment; and

(c) have been engaged in rendering services to the public, teaching, or performing research in the field of speech-language pathology or audiology for at least 5 years immediately preceding their appointment.

(3) At least two members of the board shall be speech-language pathologists and at least two shall be audiologists, with the remaining member to be a public member who is a consumer of speech-language pathology or audiology services and who is not a licentiate of the board or of any other board within the department. All board members, except the public member, shall at all times be validly licensed in speech-language pathology or audiology.

(4) Appointments shall be for 3-year terms with no person eligible to serve more than two full consecutive terms. Terms begin on the first day of the calendar year and end on the last day of the calendar year.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: En. 82A-1602.31 by Sec. 5, Ch. 543, L. 1975; R.C.M. 1947, 82A-1602.31(part); amd. Sec. 17, Ch. 184, L. 1979; amd. Sec. 5, Ch. 244, L. 1981; amd. Sec. 11, Ch. 247, L. 1981; MCA 1979, 2-15-1615; redes. 2-15-1849 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 1, Ch. 413, L. 1989.

Cross-References

Application of Montana Administrative Procedure Act to licensing, 2-4-631.

Disasters and emergencies — emergency reciprocity for persons licensed out of state, 10-3-204.

General duties of boards, 37-1-131.

Licensure of former criminal offenders, Title 37, ch. 1, part 2.

General provisions relating to health care practitioners, Title 37, ch. 2.

Speech-language pathologists and audiologists, Title 37, ch. 15.

Nondiscrimination in licensing, 49-3-204.

2-15-1850. Board of hearing aid dispensers. (1) There is a board of hearing aid dispensers.

(2) The board consists of seven members appointed by the governor with the consent of the senate. The members are:

(a) one member who shall hold or be eligible for a certificate of qualification from the American board of otolaryngology;

(b) two members, each of whom has been a licensed hearing aid dispenser for at least 5 years, possesses national certification in audiology, and has a master's level college degree;

(c) two members, each of whom does not hold a master's level college degree in audiology but has been a licensed dispenser and fitter of hearing aids for at least 5 years before being appointed to the board;

(d) two public members, each of whom is not in the hearing health field and one of whom regularly uses a hearing aid because the person has a demonstrated hearing impairment.

(3) Each member shall serve for a term of 3 years. A member may not be reappointed within 1 year after the expiration of the member's second consecutive full term.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. Sec. 4, Ch. 204, L. 1969; Sec. 66-3004, R.C.M. 1947; amd. and redes. 82A-1602.12 by Sec. 293, Ch. 350, L. 1974; Sec. 82A-1602.12, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.12; amd. Sec. 6, Ch. 244, L. 1981; amd. Sec. 12, Ch. 247, L. 1981; MCA 1979, 2-15-1616; redes. 2-15-1850 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 3, Ch. 444, L. 1981; amd. Sec. 17, Ch. 404, L. 1985; amd. Sec. 14, Ch. 481, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 481 in first sentence in (2) increased number of Board members from five to seven; in (2)(b) substituted language requiring two members to have been licensed hearing aid dispensers for 5 years, to be nationally certified, and to have a master's degree for "three members who have been licensed dispensers and fitters of hearing aids for at least 5 years before their appointment to the board"; in (2)(c) substituted language requiring two members who hold master's degree but have been licensed dispensers and fitters of hearing aids for 5 years before appointment for "one public member who is not in the hearing health care field"; inserted (2)(d) requiring two public members not in the hearing health care field, with one who uses hearing aid; and made minor changes in style.

Cross-References

Application of Montana Administrative Procedure Act to licensing, 2-4-631.

Disasters and emergencies — emergency reciprocity for persons licensed out of state, 10-3-204.

General duties of boards, 37-1-131.

Licensure of former criminal offenders, Title 37, ch. 1, part 2.

Hearing aid dispensers, Title 37, ch. 16.

Nondiscrimination in licensing, 49-3-204.

2-15-1851. Board of psychologists. (1) There is a board of psychologists.

(2) The board consists of five members appointed by the governor with the consent of the senate. One member must be a licensed psychologist in private practice, one member must be a licensed psychologist in public health, one member must be a licensed psychologist engaged in the teaching of psychology, and two members must be from the general public. A member may not serve

consecutive 5-year terms but may be reappointed after 5 years following the termination of his previous appointment.

(3) Members shall serve staggered 5-year terms.

History: En. Sec. 4, Ch. 73, L. 1971; Sec. 66-3204, R.C.M. 1947; amd. and redes. 82A-1602.27 by Sec. 314, Ch. 350, L. 1974; R.C.M. 1947, 82A-1602.27; amd. Sec. 13, Ch. 247, L. 1981; MCA 1979, 2-15-1617; redes. 2-15-1851 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 3, Ch. 324, L. 1981; amd. Sec. 2, Ch. 671, L. 1991.

Cross-References

Application of Montana Administrative Procedure Act to licensing, 2-4-631.

Disasters and emergencies — emergency reciprocity for persons licensed out of state, 10-3-204.

General duties of boards, 37-1-131.

Licensure of former criminal offenders, Title 37, ch. 1, part 2.

General provisions relating to health care practitioners, Title 37, ch. 2.

Psychologists, Title 37, ch. 17.

Nondiscrimination in licensing, 49-3-204.

2-15-1852. Board of veterinary medicine. (1) There is a board of veterinary medicine.

(2) The board consists of six members appointed by the governor with the consent of the senate, five of whom shall be licensed veterinarians and one of whom shall be a public member who is a consumer of veterinary services and who shall not be a licentiate of the board or of any other board under the department of commerce.

(3) Each veterinarian member shall be a reputable licensed veterinarian who has graduated from a college authorized by law to confer degrees and have educational standards equal to those approved by the American veterinary medical association. Each veterinarian member shall have actually and legally practiced veterinary medicine in either private practice or public service in this state for at least 5 years immediately before his appointment.

(4) Each member shall serve for a term of 5 years. The governor may, after notice and hearing, remove a member for misconduct, incapacity, or neglect of duty.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (4)En. Sec. 1, Ch. 82, L. 1913; re-en. Sec. 3217, R.C.M. 1921; re-en. Sec. 3217, R.C.M. 1935; amd. Sec. 1, Ch. 90, L. 1955; Sec. 66-2201, R.C.M. 1947; amd. and redes. 82A-1602.24 by Sec. 204, Ch. 350, L. 1974; amd. Sec. 4, Ch. 135, L. 1975; Sec. 82A-1602.24, R.C.M. 1947; (5)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.24; amd. Sec. 7, Ch. 244, L. 1981; amd. Sec. 14, Ch. 247, L. 1981; MCA 1979, 2-15-1618; amd. and redes. 2-15-1852 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 1, Ch. 43, L. 1985.

Cross-References

Application of Montana Administrative Procedure Act to licensing, 2-4-631.

Disasters and emergencies — emergency reciprocity for persons licensed out of state, 10-3-204.

General duties of boards, 37-1-131.

Licensure of former criminal offenders, Title 37, ch. 1, part 2.

Veterinary medicine and technology, Title 37, ch. 18.

Nondiscrimination in licensing, 49-3-204.

2-15-1853. Board of funeral service. (1) There is a board of funeral service.

(2) The board consists of six members appointed by the governor with the consent of the senate. Three members must be licensed morticians. One

member must be a representative of the public who is not engaged in the practice of mortuary science or funeral directing. One member must be a licensed crematory operator or crematory technician or a mortician who is engaged in a crematory operation. One member must be a representative of a cemetery company governed by Title 37, chapter 19, part 8.

(3) Board members shall serve staggered 5-year terms.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. Sec. 2, Ch. 41, L. 1963; Sec. 66-2702, R.C.M. 1947; amd. and redes. 82A-1602.16 by Sec. 261, Ch. 350, L. 1974; amd. Sec. 1, Ch. 233, L. 1977; Sec. 82A-1602.16, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.16; MCA 1979, 2-15-1619; redes. 2-15-1853 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 3, Ch. 378, L. 1981; amd. Sec. 2, Ch. 38, L. 1993; amd. Sec. 1, Ch. 52, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 52 near beginning of first sentence of (2) increased members from 5 to 6 and inserted fifth sentence that read: "One member must be a representative of a cemetery company governed by Title 37, chapter 19, part 8."

Cross-References

Application of Montana Administrative Procedure Act to licensing, 2-4-631.

Disasters and emergencies — emergency reciprocity for persons licensed out of state, 10-3-204.

General duties of boards, 37-1-131.

Licensure of former criminal offenders, Title 37, ch. 1, part 2.

Morticians and funeral directors, Title 37, ch. 19.

Nondiscrimination in licensing, 49-3-204.

2-15-1854. Board of social work examiners and professional counselors. (1) (a) The governor shall appoint a board of social work examiners and professional counselors consisting of seven members.

(b) Three members must be licensed social workers, and three must be licensed professional counselors.

(c) One member must be appointed from and represent the general public and may not be engaged in social work.

(d) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(e) The board is designated a quasi-judicial board. Members are appointed, serve, and are subject to removal in accordance with 2-15-124.

(2) Notwithstanding the qualifications for appointment contained in subsection (1), a person may be appointed to the board without being licensed as a professional counselor if he is issued a license under Title 37, chapter 23, within 30 days after his appointment.

History: En. Sec. 1, Ch. 544, L. 1983; amd. Sec. 17, Ch. 572, L. 1985; (2)En. Sec. 16, Ch. 572, L. 1985.

Cross-References

Professional counseling, Title 37, ch. 23.

2-15-1855. Repealed. Sec. 5, Ch. 524, L. 1987.

History: En. Sec. 7, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 1, Ch. 548, L. 1985.

2-15-1856. Board of barbers. (1) There is a board of barbers.

(2) The board consists of three barbers and one public member who is not a barber appointed by the governor with the consent of the senate. Each barber

member shall be a practicing barber who has been a barber in this state for at least 5 years immediately before his appointment.

(3) Each member shall serve for a term of 3 years. The governor may remove a member for cause.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. Sec. 6, Ch. 127, L. 1929; re-en. Sec. 3228.24. R.C.M. 1935; Sec. 66-406, R.C.M. 1947; amd. and. redes. 82A-1602.5 by Sec. 38, Ch. 350, L. 1974; Sec. 82A-1602.5, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.5; amd. Sec. 15, Ch. 247, L. 1981; MCA 1979, 2-15-1625; redes. 2-15-1856 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 3, Ch. 544, L. 1981.

Cross-References

Application of Montana Administrative Procedure Act to licensing, 2-4-631.

Disasters and emergencies — emergency reciprocity for persons licensed out of state, 10-3-204.

General duties of boards, 37-1-131.

Licensure of former criminal offenders, Title 37, ch. 1, part 2.

Barbers, Title 37, ch. 30.

Nondiscrimination in licensing, 49-3-204.

2-15-1857. Board of cosmetologists. (1) There is a board of cosmetologists.

(2) (a) The board consists of seven members and may include:

(i) three licensed cosmetologists;

(ii) one licensed manicurist or licensed electrologist;

(iii) two persons who are members of or affiliated with a school of cosmetology; and

(iv) one public member who is not engaged in the practice of cosmetology, electrology, or manicuring.

(b) Members are appointed by the governor with the consent of the senate.

(3) Each licensed member appointed shall have actively engaged in the profession of cosmetology, manicuring, or electrology for at least 5 years before his appointment and have been a resident of this state for at least 5 years immediately before his appointment. Each member shall be at least 18 years old and a graduate of a high school or its equivalent. No more than two members of the board may be members of or affiliated with a school of cosmetology.

(4) Each member shall serve for a term of 4 years.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. Sec. 4, Ch. 104, L. 1929; re-en. Sec. 3228.4, R.C.M. 1935; amd. Sec. 4, Ch. 222, L. 1939; amd. Sec. 4, Ch. 244, L. 1961; Sec. 66-804, R.C.M. 1947; redes. 82A-1602.8 and amd. by Sec. 1, Ch. 196, L. 1973; amd. Sec. 1, Ch. 511, L. 1977; Sec. 82A-1602.8, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.8; amd. Sec. 3, Ch. 106, L. 1981; amd. Sec. 16, Ch. 247, L. 1981; MCA 1979, 2-15-1626; redes. 2-15-1857 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 1, Ch. 370, L. 1987; amd. Sec. 1, Ch. 88, L. 1989.

Cross-References

Application of Montana Administrative Procedure Act to licensing, 2-4-631.

Disasters and emergencies — emergency reciprocity for persons licensed out of state, 10-3-204.

General duties of boards, 37-1-131.

Licensure of former criminal offenders, Title 37, ch. 1, part 2.

Cosmetology, Title 37, ch. 31.

Nondiscrimination in licensing, 49-3-204.

2-15-1858. Board of physical therapy examiners. (1) There is a board of physical therapy examiners.

(2) The board consists of five members appointed by the governor with the consent of the senate for a term of 3 years. The members are:

(a) three physical therapists licensed under Title 37, chapter 11, who have been actively engaged in the practice of physical therapy for the 3 years preceding appointment to the board;

(b) one physician licensed under Title 37, chapter 3, who has been actively engaged in the practice of medicine for the 3 years preceding appointment to the board; and

(c) one member of the general public who is not a physician or a physical therapist.

(3) Each member must have been a resident of Montana for the 3 years preceding appointment to the board.

(4) The Montana medical association may submit names of nominees under subsection (2)(b) to the governor as provided in 37-1-132.

(5) A vacancy on the board must be filled in the same manner as the original appointment. These appointments may only be made for the unexpired portions of the term.

(6) No member may be appointed for more than two consecutive terms.

(7) The governor may remove any board member for negligence in performance of any duty required by law and for incompetence or unprofessional or dishonorable conduct.

(8) A board member is not liable to civil action for any act performed in good faith in the execution of the duties required by Title 37, chapter 11.

(9) The board shall provide for its organizational structure by rule, which shall include a chairman, vice-chairman, and secretary-treasurer.

(10) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: En. Sec. 1, Ch. 491, L. 1979; amd. Sec. 8, Ch. 244, L. 1981; amd. Sec. 18, Ch. 247, L. 1981; MCA 1979, 2-15-1628; redes. 2-15-1858 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 1, Ch. 55, L. 1987; amd. Sec. 4, Ch. 83, L. 1989.

Cross-References

Governmental agencies liable for torts, Art. II, sec. 18, Mont. Const.; 2-9-102.

Application of Montana Administrative Procedure Act to licensing, 2-4-631.

Disasters and emergencies — emergency reciprocity for persons licensed out of state, 10-3-204.

General duties of boards, 37-1-131.

Licensure of former criminal offenders, Title 37, ch. 1, part 2.

General provisions relating to health care practitioners, Title 37, ch. 2.

Physical therapy, Title 37, ch. 11.

Nondiscrimination in licensing, 49-3-204.

2-15-1859. Board of occupational therapy practice. (1) There is a board of occupational therapy practice.

(2) The board consists of five members appointed by the governor. The members are:

(a) three occupational therapists licensed under Title 37, chapter 24, who are actively engaged in the practice or teaching of occupational therapy; and

(b) two members of the general public with an interest in the rights of the consumers of health services.

(3) The Montana occupational therapy association may submit names of nominees under (2)(a) of this section to the governor as provided in 37-1-132.

(4) Each appointment is subject to confirmation by the senate then meeting in regular session or next meeting in regular session following appointment.

(5) Members shall serve staggered 4-year terms. A term begins on the first day of the calendar year and ends on the last day of the calendar year or when a successor is appointed. A member who has served two successive complete terms is not eligible for reappointment until after 1 year.

(6) The governor may, after hearing, remove a member for neglect of duty or other just cause.

(7) The board is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

History: En. Sec. 5, Ch. 629, L. 1985.

Cross-References

Occupational therapy, Title 37, ch. 24.

2-15-1860. Board of respiratory care practitioners. (1) There is a board of respiratory care practitioners. The board consists of five members appointed by the governor. Each member must be a citizen of the United States and a resident of this state. The governor may request advice from the Montana society for respiratory care in making appointments to the board.

(2) The board consists of:

(a) three respiratory care practitioners, each of whom has engaged in the practice of respiratory care for a period of at least 3 years immediately preceding their appointment to the board. At least one of these members must have passed the registry examination for respiratory therapists administered by the national board for respiratory care and at least one of these members must have passed the entry-level examination for respiratory therapy technicians administered by the national board for respiratory care.

(b) one physician licensed in Montana who has a special interest in the treatment of cardiopulmonary diseases; and

(c) one member of the public who is not a member of a health care profession.

(3) The board is a quasi-judicial board, except that one member of the board need not be an attorney licensed to practice law in this state. Members are appointed, serve, are compensated, and are subject to removal as provided in 2-15-124.

(4) The board is allocated to the department of commerce for administrative purposes only as provided in 2-15-121.

History: En. Sec. 3, Ch. 532, L. 1991.

Cross-References

Respiratory care practitioners, Title 37, ch. 28.

2-15-1861. Board of sanitarians. (1) There is a board of sanitarians.

(2) The board shall consist of three members appointed by the governor with the consent of the senate. Each member must be a resident of this state,

and two of the members must be registered sanitarians. One member must be from the public and not a sanitarian who shall represent the interests of the public at large. Each sanitarian member shall have a minimum of 3 years of experience practicing as a sanitarian in the state of Montana.

(3) Members shall serve for 3-year terms. One term shall expire on July 1 of each year.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: En. 69-3412, 69-3413 by Secs. 3, 4, Ch. 314, L. 1974; R.C.M. 1947, 69-3412, 69-3413(part); amd. Sec. 18, Ch. 184, L. 1979; amd. Sec. 3, Ch. 149, L. 1981; amd. Sec. 19, Ch. 247, L. 1981; MCA 1979, 2-15-1631; redes. 2-15-1861 by Sec. 4, Ch. 274, L. 1981.

Cross-References

Application of Montana Administrative Procedure Act to licensing, 2-4-631.

Disasters and emergencies — emergency reciprocity for persons licensed out of state, 10-3-204.

General duties of boards, 37-1-131.

Licensure of former criminal offenders, Title 37, ch. 1, part 2.

Sanitarians, Title 37, ch. 40.

Nondiscrimination in licensing, 49-3-204.

2-15-1862. Renumbered 2-15-3307 by Code Commissioner, 1985. Sec. 12, Ch. 728, L. 1985.

2-15-1863. Board — composition — allocation — quasi-judicial — compensation. (1) There is a board of clinical laboratory science practitioners.

(2) The board is composed of five members who have been residents of this state for at least 2 years prior to appointment and who are actively engaged in their respective practices.

(3) Members are appointed by the governor, with consent of the senate. The members are:

(a) one physician who is qualified to direct a high complexity laboratory as provided for in the federal clinical laboratory regulations set forth in 42 CFR part 493;

(b) three clinical laboratory science practitioners who, except for the initial appointments, hold active licenses as clinical laboratory science practitioners in Montana; and

(c) one public member who is not associated with or financially interested in the practice of clinical laboratory science.

(4) Following the initial appointments of members to the board, all members shall serve 4-year terms. The terms of the initial appointments must be staggered, with three members serving a 4-year term and two members serving a 2-year term. A member may not serve more than two consecutive terms.

(5) Whenever a vacancy occurs on the board during a term of office, the governor shall appoint a successor with similar qualifications for the remainder of the unexpired term.

(6) The board is allocated to the department for administrative purposes only, as provided in 2-15-121.

(7) The board is designated a quasi-judicial board for the purposes of 2-15-124, except that a member of the board need not be an attorney licensed to practice law in this state.

(8) Members of the board are entitled to compensation and travel expenses as provided by law.

History: **En. Sec. 6, Ch. 345, L. 1993.**

Cross-References

Board duties, 37-34-201.

2-15-1864 and 2-15-1865 reserved.

2-15-1866. Board of public accountants. (1) There is a board of public accountants.

(2) The board consists of five members appointed by the governor. The members are:

(a) three certified public accountants certified under Title 37, chapter 50, who are certified and actively engaged in the practice of public accounting and who have held a valid certificate for at least 5 years before their appointment. The Montana society of certified public accountants shall submit to the governor annually a list of names of two candidates from which the appointments of these members may be made. However, the governor is not restricted to the names on this list. These members may not be residents of the same county.

(b) one licensed public accountant licensed under Title 37, chapter 50, who is actively engaged in the practice of public accounting and who has held a valid license for at least 5 years before his appointment. When an appointment in this category is necessary, the Montana society of public accountants shall submit to the governor a list of names of two candidates from which the appointment may be made. However, the governor is not restricted to the names on this list. If there is no licensed public accountant known by the governor to be qualified and willing to serve in this position, the governor may appoint a certified public accountant meeting the qualifications provided in (2)(a).

(c) one member of the general public who is not engaged in the practice of public accounting.

(3) Each appointment is subject to confirmation by the senate and shall be submitted for consideration at the next regular session following appointment.

(4) The members shall serve staggered 5-year terms. A member may not serve consecutive 5-year terms on the board. A member is eligible for reappointment to the board after 1 year or more has elapsed. The governor may, after a hearing, remove a member for neglect of duty or other just cause.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: **(1) thru (4)En. Sec. 1, Ch. 118, L. 1969; Sec. 66-1813, R.C.M. 1947; amd. and redes. 82A-1602.2 by Sec. 161, Ch. 350, L. 1974; Sec. 82A-1602.2, R.C.M. 1947; (5)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.2; amd. Sec. 3, Ch. 684, L. 1979; MCA 1979, 2-15-1641, redes. 2-15-1866 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 1, Ch. 382, L. 1989.**

Cross-References

Application of Montana Administrative Procedure Act to licensing, 2-4-631.

Disasters and emergencies — emergency reciprocity for persons licensed out of state, 10-3-204.

General duties of boards, 37-1-131.

Licensure of former criminal offenders, Title 37, ch. 1, part 2.

Public accountants, Title 37, ch. 50.

Nondiscrimination in licensing, 49-3-204.

2-15-1867. Board of realty regulation. (1) There is a board of realty regulation.

(2) The board consists of five members appointed by the governor with the consent of the senate. Three members must be licensed real estate brokers or salespeople who are actively engaged in the real estate business as a broker or salesperson in this state. Two members must be representatives of the public who are not state government officers or employees and who are not engaged in business as a real estate broker or salesperson. The members must be residents of this state.

(3) Not more than three members, including the presiding officer, may be from the same political party.

(4) The members shall serve staggered terms of 4 years. A member may not serve more than two terms or any portion of two terms.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: En. Sec. 1, Ch. 497, L. 1979; MCA 1979, 2-15-1644; redes. 2-15-1867 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 6, Ch. 52, L. 1993.

Cross-References

Application of Montana Administrative Procedure Act to licensing, 2-4-631.

Disasters and emergencies — emergency reciprocity for persons licensed out of state, 10-3-204.

General duties of boards, 37-1-131.

Licensure of former criminal offenders, Title 37, ch. 1, part 2.

Real estate brokers and salesmen law, Title 37, ch. 51.

Nondiscrimination in licensing, 49-3-204.

2-15-1868. Board of real estate appraisers. (1) There is a board of real estate appraisers.

(2) The board consists of five members appointed by the governor with the consent of the senate.

(3) Three members must be licensed or certified real estate appraisers, and two members must be representatives of the public who are not engaged in the occupation of real estate appraisal.

(4) Only one member of the board may be primarily affiliated with the same recognized appraisal group defined by the appraisal foundation.

(5) (a) Before January 1, 1992, a real estate appraiser board member must be a designated member of a national real estate appraisal organization that requires for membership appraisal experience, certain educational qualifications, successful completion of an examination, and adherence to the standards of professional appraisal practice.

(b) On and after January 1, 1992, three real estate appraiser board members must be certified real estate appraisers.

(6) Members shall serve staggered 3-year terms. A member may not serve for more than two consecutive terms.

(7) The board is allocated to the department for administrative purposes only, as prescribed in 2-15-121.

(8) A board member may be removed from the board by the governor for neglect or cause.

(9) The board shall meet at least once each calendar quarter to transact its business. Three members constitute a quorum for transacting business.

(10) The board shall elect a chairman from among its members.

(11) A board member shall receive compensation and travel expenses as provided in 37-1-133.

History: En. Sec. 3, Ch. 409, L. 1991.

Cross-References

Real estate appraisers, Title 37, ch. 54.

2-15-1869 and 2-15-1870 reserved.

2-15-1871. Board of architects. (1) There is a board of architects.

(2) The board consists of four members appointed by the governor with the consent of the senate. The members are:

(a) two registered architects who have been in continuous practice for 3 years before their appointment;

(b) one registered architect who is on the staff of the Montana state university-Bozeman school of architecture; and

(c) one representative of the public who is not engaged in or directly connected with the practice of architecture.

(3) Each member must have been a resident of Montana for 4 years prior to appointment.

(4) Each member shall serve for a term of 3 years.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1), (2), (4)En. Sec. 1, Ch. 158, L. 1917; re-en. Sec. 3229, R.C.M. 1921; re-en. Sec. 3229, R.C.M. 1935; amd. Sec. 1, Ch. 439, L. 1973; Sec. 66-101, R.C.M. 1947; amd. and redes. 82A-1602.3 by Sec. 24, Ch. 350, L. 1974; Sec. 82A-1602.3, R.C.M. 1947; (3)En. Sec. 3, Ch. 388, L. 1979; (5)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.3; amd. Sec. 3, Ch. 388, L. 1979; MCA 1979, 2-15-1651; redes. 2-15-1871 by Sec. 4, Ch. 274, L. 1981; amd. sec. 36, Ch. 308, L. 1995.

Cross-References

Application of Montana Administrative Procedure Act to licensing, 2-4-631.

Disasters and emergencies — emergency reciprocity for persons licensed out of state, 10-3-204.

General duties of boards, 37-1-131.

Licensure of former criminal offenders, Title 37, ch. 1, part 2.

Architecture, Title 37, ch. 65.

Nondiscrimination in licensing, 49-3-204.

2-15-1872. Board of landscape architects. (1) There is a board of landscape architects.

(2) The board consists of five members. Members of the board shall be appointed by the governor with the consent of the senate and must be residents of this state. Three members must be landscape architects licensed under Title 37, chapter 66. Two members must be representatives of the public who are not engaged in the practice of landscape architecture.

(3) The board is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

(4) Terms are for 4 years. Each member shall hold office until the appointment and qualification of his successor. Vacancies occurring prior to the expiration of the term shall be filled in the same manner as original appointments. No member may serve more than 8 consecutive years.

History: En. 82A-1602.30 by Sec. 8, Ch. 476, L. 1975; amd. Sec. 24, Ch. 453, L. 1977; R.C.M. 1947, 82A-1602.30(part (1)), (3); amd. Sec. 3, Ch. 325, L. 1979; amd. Sec. 20, Ch.

247, L. 1981; MCA 1979, 2-15-1652; amd. and redes. 2-15-1872 by Secs. 3 and 4, Ch. 274, L. 1981.

Cross-References

Application of Montana Administrative Procedure Act to licensing, 2-4-631.

Disasters and emergencies — emergency reciprocity for persons licensed out of state, 10-3-204.

General duties of boards, 37-1-131.

Licensure of former criminal offenders, Title 37, ch. 1, part 2.

Landscape architecture, Title 37, ch. 66.

Nondiscrimination in licensing, 49-3-204.

2-15-1873. Board of professional engineers and professional land surveyors. (1) There is a board of professional engineers and professional land surveyors.

(2) The board consists of nine members appointed by the governor with the consent of the senate. The members are:

(a) five professional engineers who have been engaged in the practice of engineering for at least 12 years and who have been in responsible charge of engineering teaching or important engineering work for at least 5 years and registered in Montana for at least 5 years. No more than two of these members may be from the same branch of engineering.

(b) two professional and practicing land surveyors who have been engaged in the practice of land surveying for at least 12 years and who have been in responsible charge of land surveying or important land surveying work for at least 5 years and registered in Montana for at least 5 years;

(c) two representatives of the public who are not engaged in or directly connected with the practice of engineering or land surveying.

(3) Each member shall be a citizen of the United States and a resident of this state. A member, after serving three consecutive terms, shall not be reappointed.

(4) (a) Except as provided in subsection (4)(b), each member shall serve for a term of 4 years.

(b) The governor may remove a member for misconduct, incompetency, neglect of duty, or for any other sufficient cause and may shorten the term of one public member so that it is not coincident with the term of the other public member.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (4)En. Sec. 4, Ch. 150, L. 1957; amd. Sec. 2, Ch. 282, L. 1969; Sec. 66-2327, R.C.M. 1947; amd. and redes. 82A-1602.11 by Sec. 215, Ch. 350, L. 1974; amd. Sec. 1, Ch. 366, L. 1975; Sec. 82A-1602.11, R.C.M. 1947; (5)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.11; amd. Sec. 3, Ch. 408, L. 1979; amd. Sec. 21, Ch. 247, L. 1981; MCA 1979, 2-15-1653; redes. 2-15-1873 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 1, Ch. 553, L. 1985.

Cross-References

Application of Montana Administrative Procedure Act to licensing, 2-4-631.

Disasters and emergencies — emergency reciprocity for persons licensed out of state, 10-3-204.

General duties of boards, 37-1-131.

Licensure of former criminal offenders, Title 37, ch. 1, part 2.

Engineers and land surveyors, Title 37, ch. 67.

Nondiscrimination in licensing, 49-3-204.

2-15-1874. State electrical board. (1) There is a state electrical board.

(2) The board consists of five members appointed by the governor with the consent of the senate, who shall be residents of this state. Two members of the board shall represent the public. Two members of the board shall be licensed electricians. One member shall be a master licensed electrical contractor.

(3) The members of the board shall serve for a term of 5 years with their terms of office so arranged that one term expires on July 1 of each year.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. Sec. 4, Ch. 148, L. 1965; amd. Sec. 1, Ch. 374, L. 1973; Sec. 66-2804, R.C.M. 1947; amd. and redes. 82A-1602.10 by Sec. 271, Ch. 350, L. 1974; amd. Sec. 58, Ch. 439, L. 1975; Sec. 82A-1602.10, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.10(1) thru (3); amd. Sec. 3, Ch. 546, L. 1979; MCA 1979, 2-15-1654; redes. 2-15-1874 by Sec. 4, Ch. 274, L. 1981.

Cross-References

Application of Montana Administrative Procedure Act to licensing, 2-4-631.

Disasters and emergencies — emergency reciprocity for persons licensed out of state, 10-3-204.

General duties of boards, 37-1-131.

Licensure of former criminal offenders, Title 37, ch. 1, part 2.

Electricians and electrical safety, Title 37, ch. 68.

Nondiscrimination in licensing, 49-3-204.

2-15-1875. Board of plumbers. (1) There is a board of plumbers.

(2) The board consists of nine members appointed by the governor with the consent of the senate. The members are:

(a) two master plumbers and two journeyman plumbers who are 18 years of age or older, who have been residents of this state for more than 1 year, and who have been duly licensed master or journeyman plumbers at least 5 out of the last 8 years immediately preceding their appointment;

(b) one registered professional engineer qualified in mechanical engineering;

(c) three representatives of the public who are not engaged in the business of installing or selling plumbing equipment;

(d) one appointed representative of the department of public health and human services, who must be a sanitary engineer and who is secretary of the board.

(3) The appointed members of the board shall serve for terms of 4 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. 82A-1602.22 by Sec. 359, Ch. 350, L. 1974; Sec. 82A-1602.22, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.22; amd. Sec. 3, Ch. 549, L. 1979; amd. Sec. 22, Ch. 247, L. 1981; MCA 1979, 2-15-1655; redes. 2-15-1875 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 10, Ch. 418, L. 1995; amd. Sec. 13, Ch. 546, L. 1995.

Cross-References

Application of Montana Administrative Procedure Act to licensing, 2-4-631.

Disasters and emergencies — emergency reciprocity for persons licensed out of state, 10-3-204.

General duties of boards, 37-1-131.

Licensure of former criminal offenders, Title 37, ch. 1, part 2.

Plumbing, Title 37, ch. 69.

Nondiscrimination in licensing, 49-3-204.

2-15-1876 through 2-15-1880 reserved.

2-15-1881. Board of horseracing. (1) There is a board of horseracing.

(2) (a) The board consists of seven members, appointed by the governor with the consent of the senate, who must be citizens, residents, and qualified electors of this state.

(b) Two board members must be in the horseracing industry and may not represent the same district as described in subsection (3). The other five members may not be in the horseracing industry.

(c) A member of the board may not wager at any licensed racing meet in this state.

(3) Except for members appointed pursuant to subsection (2)(b), the governor may not appoint any member who would have a conflict of interest during the member's term of appointment. The governor shall appoint, on the basis of experience and qualifications, one member from each of the following districts:

(a) first district, consisting of Blaine, Carter, Custer, Daniels, Dawson, Fallon, Garfield, McCone, Phillips, Powder River, Prairie, Richland, Rosebud, Roosevelt, Sheridan, Treasure, Valley, and Wibaux Counties;

(b) second district, consisting of Big Horn, Carbon, Fergus, Golden Valley, Judith Basin, Musselshell, Petroleum, Sweet Grass, Stillwater, Wheatland, and Yellowstone Counties;

(c) third district, consisting of Cascade, Chouteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole Counties;

(d) fourth district, consisting of Beaverhead, Broadwater, Deer Lodge, Gallatin, Jefferson, Lewis and Clark, Madison, Meagher, Park, and Silver Bow Counties; and

(e) fifth district, consisting of Flathead, Granite, Lake, Lincoln, Missoula, Mineral, Powell, Ravalli, and Sanders Counties.

(4) Each member shall serve for a term of 3 years. The terms of the members must be staggered. A member may be removed from office by the governor only for cause.

(5) A board member may be reappointed by the governor. A vacancy on the board must be filled for the unexpired term by appointment by the governor, with the consent of the senate, as provided in this section.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (4)En. Sec. 1, Ch. 196, L. 1965; amd. Sec. 1, Ch. 457, L. 1973; Sec. 62-501, R.C.M. 1947; redes. 82A-1602.13 by Sec. 12, Ch. 350, L. 1974; Sec. 82A-1602.13, R.C.M. 1947; (5)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.13; MCA 1979, 2-15-1662; redes. 2-15-1881 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 3, Ch. 563, L. 1983; amd. Sec. 1, Ch. 353, L. 1995.

Cross-References

Application of Montana Administrative Procedure Act, 2-4-102, 2-4-631.

Horseracing, Title 23, ch. 4.

General duties of boards, 37-1-131.

Licensure of former criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

2-15-1882. Board of athletics. (1) There is a board of athletics.

(2) The board consists of three members appointed by the governor with the consent of the senate.

(3) Members shall serve staggered 3-year terms, and a member may not serve more than four consecutive terms.

(4) The board is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

History: En. Sec. 1, Ch. 506, L. 1983; amd. Sec. 1, Ch. 11, L. 1993.

2-15-1883. Board of outfitters. (1) There is a board of outfitters.

(2) (a) The board consists of seven members to be appointed by the governor.

(b) Five members must be licensed outfitters who are actively involved in the outfitting business. At least one of the outfitter members must be a person primarily engaged in the fishing outfitting business. Each outfitter member shall represent one of the five districts designated in 2-15-3402(2). Two qualified persons in each district must be nominated for appointment by the licensed outfitters residing in that district by submitting by mail a notarized ballot, in a form and manner prescribed by the board. The board shall also prescribe a procedure for selecting persons to be nominated by mail-in ballot. The two outfitters receiving the most votes must be nominated for appointment. The department of commerce is responsible for all notifications, reporting, and counting of ballots. Names of nominees must be submitted to the governor, who will select one outfitter from each district to be a board member.

(c) The governor shall also appoint one member who is an employee of the department of fish, wildlife, and parks and one member from the general public.

(3) A vacancy on the board must be filled in the same manner as the original appointment.

(4) The members shall serve staggered 3-year terms and take office on the day they are elected.

(5) The board is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

(6) Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.

History: En. 82A-2005 by Sec. 57, Ch. 511, L. 1973; amd. Sec. 1, Ch. 63, L. 1974; R.C.M. 1947, 82A-2005; amd. Sec. 1, Ch. 545, L. 1981; amd. Sec. 3, Ch. 192, L. 1983; amd. Sec. 1, Ch. 528, L. 1987; Sec. 2-15-3403, MCA 1985; redes. 2-15-1883 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 1, Ch. 501, L. 1989.

Cross-References

Outfitters and guides, Title 37, ch. 47.

2-15-1884 through 2-15-1890 reserved.

2-15-1891. Board of private security patrol officers and investigators. (1) There is a board of private security patrol officers and investigators.

(2) The board consists of seven voting members appointed by the governor with the consent of the senate. The members shall represent:

(a) one contract security company, as defined by 37-60-101;

(b) one proprietary security organization, as defined by 37-60-101;

(c) one city police department;

(d) one county sheriff's department;

(e) one member of the public;

(f) one member of the peace officers' standards and training advisory council; and

(g) a licensed private investigator.

(3) Members of the board must be at least 25 years of age and have been residents of this state for more than 5 years.

(4) The appointed members of the board shall serve for a term of 3 years. The terms of board members shall be staggered.

(5) The governor may remove a member for misconduct, incompetency, neglect of duty, or unprofessional or dishonorable conduct.

(6) A vacancy on the board must be filled in the same manner as the original appointment and may only be for the unexpired portion of the term.

(7) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: En. Sec. 1, Ch. 550, L. 1983; amd. Sec. 1, Ch. 217, L. 1989.

2-15-1892 through 2-15-1895 reserved.

2-15-1896. Repealed. Sec. 4, Ch. 346, L. 1997.

History: En. Sec. 1, Ch. 483, L. 1989.

Part 19

Insurance and Investment

2-15-1901. Office of securities commissioner. There is an office of securities commissioner, and the state auditor of Montana is hereby made and constituted ex officio securities commissioner.

History: En. Sec. 1, Ch. 251, L. 1961; R.C.M. 1947, 15-2001; amd. Sec. 8, Ch. 351, L. 1979.

Cross-References

State Auditor, 2-15-601.

Securities regulation, Title 30, ch. 10.

General powers and duties of Commissioner, 30-10-107, 30-10-206.

2-15-1902. Insurance department. (1) There is an insurance department of this state which shall be located in or convenient to the office occupied by the state auditor.

(2) The insurance department shall be under the control and supervision of the commissioner.

(3) Funds adequate for the maintenance and operation of the insurance department shall be expressly appropriated by the legislature and shall be used solely for the purposes for which so appropriated.

History: En. Sec. 21, Ch. 286, L. 1959; R.C.M. 1947, 40-2702.

Cross-References

Insurance and Insurance Companies, Title 33.

General powers and duties of Insurance Department, Title 33, ch. 1, part 3.

2-15-1903. Commissioner of insurance designated. The state auditor shall be ex officio the commissioner of insurance of this state.

History: En. Sec. 20, Ch. 286, L. 1959; R.C.M. 1947, 40-2701.

Cross-References

State Auditor, 2-15-601.

Part 20

Department of Justice

2-15-2001. Department of justice — head. There is a department of justice. The department head is the attorney general.

History: En. 82A-1201 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 6, Ch. 250, L. 1973; R.C.M. 1947, 82A-1201.

Cross-References

General duties of Attorney General, 2-15-501.

Law Enforcement, Title 44.

2-15-2002. Repealed. Sec. 14, Ch. 503, L. 1985.

History: En. 82A-1204 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1204.

2-15-2003. Repealed. Sec. 14, Ch. 503, L. 1985.

History: En. Sec. 1, Ch. 176, L. 1967; amd. Sec. 1, Ch. 219, L. 1971; R.C.M. 1947, 82-414(1).

2-15-2004. Repealed. Sec. 14, Ch. 503, L. 1985.

History: En. 82-429 by Sec. 3, Ch. 530, L. 1977; R.C.M. 1947, 82-429; amd. Sec. 21, Ch. 184, L. 1979.

2-15-2005. State fire prevention and investigation program — advisory council. (1) There is a state fire prevention and investigation program in the department of justice and under the supervision and control of the attorney general.

(2) A person appointed to administer the fire prevention and investigation program shall represent the state of Montana as the state fire marshal and must be a person qualified by experience, training, and high professional competence in matters of fire service and safety.

(3) The attorney general shall create a fire prevention and investigation advisory council in accordance with procedures provided in 2-15-122.

History: En. Sec. 1, Ch. 148, L. 1911; re-en. Sec. 2737, R.C.M. 1921; re-en. Sec. 2737, R.C.M. 1935; amd. Sec. 1, Ch. 229, L. 1967; amd. Sec. 33, Ch. 187, L. 1977; amd. Sec. 1, Ch. 519, L. 1977; R.C.M. 1947, 82-1201; amd. Sec. 4, Ch. 503, L. 1985; amd. Sec. 3, Ch. 706, L. 1991.

Cross-References

State fire prevention and investigation program, Title 50, ch. 3.

Fireworks, Title 50, ch. 37.

Fire safety in public buildings, Title 50, ch. 61.

Fire safety in child-care facilities, 52-2-734.

2-15-2006. Board of crime control — composition — allocation. (1) There is a board of crime control.

(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(3) The board is composed of 18 members appointed by the governor in accordance with 2-15-124 and any special requirements of Title I of the Omnibus Crime Control and Safe Streets Act, as amended. The board shall be representative of state and local law enforcement and criminal justice agencies, including agencies directly related to the prevention and control of juvenile delinquency, units of general local government, and public agencies maintaining programs to reduce and control crime and shall include

representatives of citizens and professional and community organizations, including organizations directly related to delinquency prevention.

History: **En. 82A-1207 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 61, L. 1973; amd. Sec. 1, Ch. 202, L. 1977; R.C.M. 1947, 82A-1207(1) thru (3); amd. Sec. 22, Ch. 184, L. 1979.**

Cross-References

Board of Crime Control, 44-4-301.

2-15-2007. Highway traffic safety program. Except as provided in 61-2-103, the highway traffic safety program provided for in 61-2-102 must be administered by the department of transportation.

History: **En. Sec. 8(2), Ch. 274, L. 1981; amd. Sec. 4, Ch. 3, L. 1985; amd. Sec. 1, Ch. 538, L. 1995.**

2-15-2008 through 2-15-2010 reserved.

2-15-2011. Repealed. Sec. 1, Ch. 77, L. 1993.

History: **En. 82-425, 82-426 by Secs. 1, 2, Ch. 522, L. 1977; R.C.M. 1947, 82-425, 82-426; amd. Sec. 1, Ch. 68, L. 1985.**

2-15-2012 through 2-15-2014 reserved.

2-15-2015. Workers' compensation fraud office. There is a workers' compensation fraud investigation and prosecution office in the department of justice. The office shall investigate and prosecute cases referred by the state compensation insurance fund or the department of labor and industry on behalf of the uninsured employers' fund. The office is under the supervision and control of the attorney general and consists of:

(1) one or more investigators qualified by education, training, experience, and high professional competence in investigative procedures who shall investigate violations of the provisions of Title 39, chapters 71 and 72, at the request of the state compensation insurance fund or the department of labor and industry on behalf of the uninsured employers' fund; and

(2) one or more attorneys licensed to practice law in Montana who shall prosecute violations of the provisions of Title 39, chapters 71 and 72. The attorneys may also assist county attorneys in prosecuting violations of Title 39, chapters 71 and 72, without charge to the county.

(3) The state compensation insurance fund, the department of labor and industry, and the department of justice shall submit to the legislature for approval one proposed biennial budget for the workers' compensation fraud office. The proposed budget for staffing and related expenses must be based upon the needs of the state compensation insurance fund and the department of labor and industry on behalf of the uninsured employers' fund for investigating and prosecuting workers' compensation fraud.

History: **En. Sec. 1, Ch. 296, L. 1993; amd. Sec. 2, Ch. 276, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 276 in second sentence of introduction and at end of (1), after "fund", inserted "or the department of labor and industry on behalf of the uninsured employers' fund"; at beginning of (1) substituted "one or more investigators" for "four persons"; at beginning of (2) substituted "one or more attorneys" for "one person"; inserted (3) requiring submission of one proposed biennial budget for the Workers' Compensation Fraud Office to Legislature and outlining basis of proposed budget; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

State Fund fraud detection and prevention unit, 39-71-211.

2-15-2016 through 2-15-2020 reserved.

2-15-2021. Gaming advisory council — allocation — composition — compensation — biennial report. (1) There is a gaming advisory council.

(2) The gaming advisory council is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(3) The gaming advisory council consists of nine members. One member must be from the senate, and one member must be from the house of representatives. The senate committee on committees and the speaker of the house of representatives shall appoint the legislative members of the council. The seven remaining members must be appointed by the department, with one representing the public at large, two representing local governments, one being a Native American, and three representing the gaming industry.

(4) Each gaming advisory council member is appointed to a 3-year term of office. A member of the council may be removed for good cause by the appointing body provided for in subsection (3).

(5) The gaming advisory council shall appoint a presiding officer from its members.

(6) Members of the gaming advisory council are entitled to travel, meals, and lodging expenses as provided for in 2-18-501 through 2-18-503. A member who is not a full-time salaried officer or employee of the state or of a political subdivision of the state is also entitled to be paid $25 for each day during which the member is actually and necessarily engaged in the performance of council duties. Expenses of the council must be paid from licensing fees received by the department.

(7) The gaming advisory council shall, within its authorized budget, hold meetings and incur expenses as it considers necessary to study all aspects of gambling in the state.

(8) (a) The gaming advisory council shall submit a biennial report to the department, at a time designated by the department, with recommendations for amendments to the gambling statutes, the need for additional or modified department rules, the clarification of existing rules, and other recommendations on the operation of the department or any other gambling-related matter.

(b) The biennial report required under subsection (8)(a) must be affixed to the report on gambling in the state that the department submits that year.

(c) The council may submit interim reports to the department as the council considers necessary.

(d) The council shall meet with the department upon request of the department.

(e) The department shall meet with the council upon request of the council.

(9) The department shall give each council member notice and a copy of each proposed change in administrative rules relating to gambling. The notice and copy must be given at the time a notice of proposed rules changes is filed with the secretary of state. The council shall review the proposal, may comment on it, and may attend any hearing on the proposal. The department shall consider any comment by any council member or by the council as a whole prior to adopting the proposed change.

History: En. Sec. 64, Ch. 642, L. 1989; amd. Sec. 9, Ch. 112, L. 1991; amd. Sec. 53, Ch. 647, L. 1991; amd. Sec. 7, Ch. 349, L. 1993; amd. Sec. 1, Ch. 626, L. 1993.

Cross-References

Local government powers regarding gambling, 7-1-112.

Gambling, Title 23, ch. 5.

Part 21

Environmental Advisory Boards

2-15-2101. Repealed. Sec. 568, Ch. 546, L. 1995.

History: En. 82A-601 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 95, Ch. 349, L. 1974; amd. Sec. 1, Ch. 326, L. 1977; R.C.M. 1947, 82A-601; amd. Sec. 1, Ch. 34, L. 1989.

2-15-2102. Repealed. Sec. 4, Ch. 34, L. 1989.

History: En. 82A-608 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 100, Ch. 349, L. 1974; amd. Sec. 2, Ch. 326, L. 1977; R.C.M. 1947, 82A-608.

2-15-2103. Repealed. Sec. 3, Ch. 16, Sp. L. November 1993.

History: En. 82A-604 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 97, Ch. 349, L. 1974; R.C.M. 1947, 82A-604.

2-15-2104. Repealed. Sec. 567, Ch. 546, L. 1995.

History: En. 82A-605 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 322, L. 1975; amd. Sec. 1, Ch. 524, L. 1977; R.C.M. 1947, 82A-605; amd. Sec. 1, Ch. 450, L. 1981; amd. Sec. 2, Ch. 34, L. 1989.

2-15-2105. Water and wastewater operators' advisory council. (1) There is a water and wastewater operators' advisory council.

(2) The council consists of seven members. Except as provided in subsection (2)(e), the members must be appointed by the governor. The members are:

(a) two members who are employed water supply system or water treatment plant operators holding valid certificates. One of these members must hold a certificate by examination of the highest class issued by the department of environmental quality. There is no restriction on the classification of the certificate held by the other operator.

(b) two members who are employed wastewater treatment plant operators holding valid certificates. One of these members must hold a certificate by examination of the highest class issued by the department of environmental quality. There is no restriction on the classification of the certificate held by the other operator.

(c) one member serving on the faculty of a university or college whose major field is related to water supply systems, wastewater treatment, chemical or civil engineering, chemistry, or bacteriology;

(d) one member who is a representative of a municipality that is required to employ a certified operator and who holds a position of city manager, city engineer, director of public works, works manager, or an equivalent position;

(e) a qualified member of the staff of the department of environmental quality, appointed by the department's director.

(3) Members, except the ex officio member from the department of environmental quality, shall serve for terms of 6 years.

History: En. 82A-612 by Sec. 101, Ch. 349, L. 1974; R.C.M. 1947, 82A-612; amd. Sec. 3, Ch. 243, L. 1983; amd. Sec. 1, Ch. 16, Sp. L. November 1993; amd. Sec. 13, Ch. 418, L. 1995.

Cross-References

Board of Water and Wastewater Operators, Title 37, ch. 42, part 2.

2-15-2106. Air pollution control advisory council. (1) There is an air pollution control advisory council.

(2) The council consists of 10 members appointed by the governor, with the consent of the senate, as follows:

(a) a representative of labor;
(b) a representative of agriculture;
(c) a representative of the manufacturing industry;
(d) a representative of the fuel industry;
(e) a practicing physician licensed in this state;
(f) a practicing veterinarian licensed in this state;
(g) a practicing registered professional chemical or environmental engineer;
(h) a meteorologist;
(i) a conservationist; and
(j) an urban planning consultant.

(3) The appointed members shall serve at the pleasure of the governor.

(4) Subsections (5) through (8) of 2-15-122 apply to the council and members.

History: En. 82A-606 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 98, Ch. 349, L. 1974; R.C.M. 1947, 82A-606.

Cross-References

Air quality, Title 75, ch. 2.

Council — generally, 75-2-121, et seq.

2-15-2107. Water pollution control advisory council. (1) There is a water pollution control advisory council.

(2) The council consists of eleven members. The members are:

(a) the director of fish, wildlife, and parks;
(b) the administrator of the water resources division of the department of natural resources and conservation;
(c) the director of agriculture;
(d) eight members appointed by the governor as follows:
(i) a representative of industry concerned with the disposal of inorganic waste;
(ii) a representative of industry concerned with the disposal of organic waste;
(iii) a livestock feeder;
(iv) a representative of municipal government;
(v) a representative of an organization concerned with fishing for sport;
(vi) a representative from labor;
(vii) a supervisor of a soil and water conservation district;
(viii) a representative of an organization concerned with water recreation.

(3) The appointed council members serve at the pleasure of the governor.

(4) Subsections (5) through (8) of 2-15-122 apply to the council and members.

History: En. 82A-607 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 99, Ch. 349, L. 1974; R.C.M. 1947, 82A-607; amd. Sec. 2, Ch. 218, L. 1979.

Cross-References

Rules concerning dietitians, 37-21-201.

Water quality, Title 75, ch. 5.

Council — generally, 75-5-221.

2-15-2108. Petroleum tank release compensation board. (1) There is a petroleum tank release compensation board.

(2) The board consists of seven members appointed by the governor as follows:

(a) the director of the department of environmental quality or the director's representative;

(b) a representative of the state fire prevention and investigation program of the department of justice;

(c) a representative of the petroleum services industry or a representative of the petroleum release remediation consultant industry;

(d) a representative of independent petroleum marketers and chain retailers;

(e) a representative of the general public;

(f) a representative of service station dealers; and

(g) a representative of the insurance industry.

(3) The board shall elect a presiding officer.

(4) The term of membership is 3 years.

(5) Members shall serve without pay, but are entitled to reimbursement for travel, meals, and lodging while engaged in board business, as provided in 2-18-501 through 2-18-503.

History: En. Sec. 8, Ch. 528, L. 1989; amd. Sec. 4, Ch. 706, L. 1991; amd. Sec. 1, Ch. 55, L. 1995; amd. Sec. 14, Ch. 418, L. 1995.

Cross-References

Petroleum storage tank cleanup, Title 75, ch. 11, part 3.

2-15-2109. Renumbered 2-15-2213. Sec. 568, Ch. 546, L. 1995.

2-15-2110. Small business compliance assistance advisory council. (1) There is a small business compliance assistance advisory council.

(2) The council consists of seven members, as follows:

(a) two members that are not owners or representatives of owners of small business stationary sources, appointed by the governor to represent the general public;

(b) four members that are owners or representatives of owners of small business stationary sources and who are not legislators, one to be appointed by the majority and minority leadership of the house of representatives and one to be appointed by the majority and minority leadership of the senate; and

(c) one member that is a representative of the department of environmental quality, appointed by the director of that department.

(3) Appointed members shall serve for terms of 3 years.

(4) The provisions of 2-15-122(5) through (8) apply to the council and its members.

History: En. Sec. 14, Ch. 502, L. 1993; amd. Sec. 15, Ch. 418, L. 1995.

Cross-References

Duties and compliance assistance program, 75-2-106 through 75-2-109.

Operating permits and fees, 75-2-217 through 75-2-220.

Part 22

Department of Public Health and Human Services

2-15-2201. Department of public health and human services — head. There is a department of public health and human services. The department head is a director of public health and human services appointed by the governor in accordance with 2-15-111.

History: En. 82A-1901 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1901; amd. Sec. 15, Ch. 546, L. 1995.

Cross-References

Constitutional requirement for providing economic assistance, Art. XII, sec. 3(3), Mont. Const.

Social Services and Institutions, Title 53.

General powers and duties of Department, Title 53, ch. 2, part 2.

2-15-2202. Renumbered 2-15-1205. Sec. 1, Ch. 271, L. 1983.

2-15-2203. Board of public assistance — allocation — quasi-judicial. (1) There is a board of public assistance.

(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(3) The board consists of three members appointed by the governor as prescribed in 2-15-124, except that an employee of the department of public health and human services may not be appointed to the board.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124. For purposes of that section, a majority is considered as one.

History: En. 82A-1906 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1906; amd. Sec. 1, Ch. 37, L. 1987; amd. Sec. 16, Ch. 546, L. 1995.

Cross-References

Appeals relating to nongranting of public assistance, 53-2-606.

2-15-2204. Developmental disabilities planning and advisory council. (1) The governor shall appoint a developmental disabilities planning and advisory council in accordance with the provisions of this section.

(2) The council is composed of at least 23 but no more than 25 members and consists of the following:

(a) a representative of the program of services provided under the authority of the Rehabilitation Act of 1973, 29 U.S.C. 701, et seq.;

(b) a representative of the program of services provided under the authority of the Older Americans Act of 1965, 42 U.S.C. 3001, et seq.;

(c) a representative of the program of services for persons with developmental disabilities provided under the authority of Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq.;

(d) a representative of the program of services provided under the authority of the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.;

(e) two recognized professionals, one each in the disciplines of medicine and law;

(f) one member of the state senate;

(g) one member of the state house of representatives;

(h) 12 persons, each of whom has a developmental disability or who is an immediate family member or guardian of a person with a developmental disability;

(i) the director of the university-affiliated or satellite program on developmental disabilities, created pursuant to 42 U.S.C. 6061, or a designee of the director;

(j) the director of the state protection and advocacy system, created pursuant to 42 U.S.C. 6041, or a designee of the director; and

(k) a representative of a statewide developmental disabilities service provider organization whose member agencies provide direct services to persons with developmental disabilities.

(3) (a) Each member who serves on the council pursuant to subsection (2)(a), (2)(b), (2)(c), or (2)(d) shall serve for a term concurrent with the respective term of the director of the agency that administers the program that the member represents. Upon the removal of an agency director from office, the representative's term as a member of the council is automatically terminated.

(b) Each member who serves on the council pursuant to subsection (2)(f) or (2)(g) must be appointed or reappointed annually by the governor.

(c) Eight of the members serving on the council pursuant to subsection (2)(e), (2)(h), (2)(k), or (3)(d) must be appointed by the governor to serve for terms concurrent with the gubernatorial term and until their successors are appointed. The remaining members serving on the council pursuant to subsection (2)(e), (2)(h), (2)(k), or (3)(d) must be appointed by the governor to serve for terms ending on January 1 of the third year of the succeeding gubernatorial term and until their successors are appointed.

(d) Representatives named to the council pursuant to this section, in addition to fulfilling the requirements listed in subsections (2)(a) through (2)(k), may also be selected to represent the following areas: psychology, social work, special education, and minority groups, including Native Americans with developmental disabilities. A minimum of one member of the council must represent each of these areas. In the event that the persons listed in subsections (2)(a) through (2)(k) do not represent all of the areas of psychology, social work, special education, and minority groups, including Native Americans with developmental disabilities, up to two representatives may be added to the membership of the council to represent not more than two of these groups.

(4) The council is allocated to the department for administrative purposes only and, unless inconsistent with the provisions of 53-20-206 and this section, the provisions of 2-15-121 apply.

History: En. 71-2406 by Sec. 5, Ch. 239, L. 1975; amd. Sec. 4, Ch. 559, L. 1977; R.C.M. 1947, 71-2406(1) thru (3), (10); amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 443, L. 1991; amd. Sec. 16, Ch. 418, L. 1995; amd. Sec. 17, Ch. 546, L. 1995; amd. Sec. 9, Ch. 42, L. 1997; amd. Sec. 1, Ch. 171, L. 1997.

Compiler's Comments

1997 Amendments: Chapter 42 in (2)(i), after "U.S.C.", substituted "6061" for "6031"; and in (2)(j), after "U.S.C.", substituted "6041" for "6012". Amendment effective March 12, 1997.

Chapter 171 in (2)(h) increased from 7 to 12 the number of developmentally disabled members; deleted former (2)(i) that read: "one member of each of the five regional councils provided for in 53-20-207, each of whom has a developmental disability or who is an immediate family member or guardian of a person with a developmental disability"; adjusted subsection references; and made minor changes in style.

Cross-References

Developmental disabilities, Title 53, ch. 20.

General provisions relating to Council, 53-20-206.

2-15-2205. Division of visual services. There is a division of visual services within the department of public health and human services. The division head is an administrator appointed by the director of the department of public health and human services in accordance with classification requirements. The division is responsible for administration of rehabilitative and other services for blind persons and persons with low vision.

History: En. Sec. 1, Ch. 523, L. 1979; amd. Sec. 2, Ch. 239, L. 1989; amd. Sec. 18, Ch. 546, L. 1995; amd. Sec. 1, Ch. 472, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 472 at end substituted "persons with low vision" for "visually handicapped persons".

Cross-References

Vocational rehabilitation of the blind, Title 53, ch. 7, part 3.

2-15-2206. Office of aging. (1) There is an office of aging, headed by a coordinator of aging. The office is in the department of public health and human services.

(2) The governor shall appoint an advisory council on aging. The council is composed of 11 members, a majority of whom must be 60 years of age or older. Members shall serve staggered 3-year terms and until their successors are appointed. Vacancies must be filled by appointment for the unexpired term. The council is allocated to the department of public health and human services for administrative purposes only.

History: En. Sec. 4, Ch. 424, L. 1983; amd. Sec. 1, Ch. 95, L. 1985; amd. Sec. 1, Ch. 176, L. 1989; amd. Sec. 5, Ch. 418, L. 1995; Sec. 2-15-231, MCA 1995; redes. 2-15-2206 by Sec. 314(2), Ch. 42, L. 1997.

2-15-2207 through 2-15-2209 reserved.

2-15-2210. Repealed. Sec. 16, Ch. 171, L. 1997.

History: En. Sec. 4, Ch. 569, L. 1991; amd. Sec. 17, Ch. 418, L. 1995; amd. Sec. 19, Ch. 546, L. 1995.

2-15-2211. Renumbered 2-15-2402. Sec. 114, Ch. 609, L. 1987.

2-15-2212. Committee on telecommunications access services for persons with disabilities — composition — allocation. (1) There is a committee on Montana telecommunications access services for persons with disabilities.

(2) The committee consists of 12 members appointed by the governor as follows:

(a) four members who are persons with disabilities, two of whom must be deaf or hard-of-hearing;

(b) two members who are not persons with disabilities, one of whom must be engaged in a business other than a business in the telecommunications industry and one of whom must be a senior citizen;

(c) one member from the department of public health and human services;

(d) one member from the largest local exchange company in Montana;

(e) one member from an independent local exchange company;

(f) one member from an interLATA interexchange carrier;

(g) one member from the public service commission; and

(h) one member who is a licensed audiologist.

(3) The committee is allocated to the department of public health and human services for administrative purposes only as provided in 2-15-121.

History: En. Sec. 3, Ch. 669, L. 1989; amd. Sec. 20, Ch. 546, L. 1995; amd. Sec. 1, Ch. 396, L. 1997; amd. Sec. 2, Ch. 472, L. 1997.

Compiler's Comments

1997 Amendments — Composite Section: Chapter 396 in (1) and (2), in three places, substituted "disabled" for "handicapped"; in (1) inserted "Montana" and inserted "access"; in (2) substituted "12 members" for "11 members"; inserted (2)(h) adding licensed audiologist to Committee; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 472 throughout section substituted reference to persons with disabilities for reference to handicapped; and made minor changes in style.

Chapter 396 substituted "disabled" for "handicapped", and Ch. 472 substituted "persons with disabilities" for "handicapped". The codifier chose the latter change.

Cross-References

Licensure of audiologists, Title 37, ch. 15, part 3.

Telecommunications services for the handicapped, Title 53, ch. 19, part 3.

2-15-2213. Repealed. Sec. 16, Ch. 171, L. 1997.

History: En. Sec. 5, Ch. 649, L. 1989; amd. Sec. 1, Ch. 634, L. 1991; amd. Sec. 14, Ch. 546, L. 1995; Sec. 2-15-2109, MCA 1993; redes. 2-15-2213 by Sec. 568, Ch. 546, L. 1995.

2-15-2214. Montana children's trust fund board. (1) There is a Montana children's trust fund board, consisting of seven members appointed by the governor and serving 3-year terms. Two board members must be chosen from state government agencies involved in education and social work relating to children. The governor shall ensure geographic distribution of appointees.

(2) The board is allocated to the department of public health and human services for administrative purposes only, as provided in 2-15-121. The board may employ staff to carry out its duties as described in Title 41, chapter 3, part 7.

History: En. Sec. 2, Ch. 610, L. 1985; amd. Sec. 11, Ch. 609, L. 1987; Sec. 2-15-2211, MCA 1985; redes. 2-15-2402 by Sec. 114, Ch. 609, L. 1987; amd. Sec. 1, Ch. 514, L. 1991; amd. Sec. 23, Ch. 546, L. 1995; Sec. 2-15-2402, MCA 1993; redes. 2-15-2214 by Sec. 568, Ch. 546, L. 1995.

Cross-References

Income tax deduction for contribution to state child abuse and neglect prevention program, 15-30-155.

Montana children's trust fund, Title 41, ch. 3, part 7.

2-15-2215. Repealed. Sec. 16, Ch. 171, L. 1997.

History: En. Sec. 1, Ch. 579, L. 1995.

2-15-2216. Trauma care committee. (1) There is a trauma care committee.

(2) The committee consists of members appointed by the governor as follows:

(a) a member of the Montana committee on trauma of the American college of surgeons, who shall serve as presiding officer of the committee;

(b) two members from each regional trauma care advisory committee created pursuant to 50-6-411;

(c) a member of the Montana trauma coordinators;

(d) a representative of the Montana hospital association;

(e) a member of the Montana medical association;

(f) a member of the emergency nurses association;

(g) an individual who is or who is employed by a Montana private ambulance operator;

(h) a member of the Montana emergency medical services association;

(i) a nurse or physician representing the Indian health service; and

(j) a member of the American college of emergency physicians, Montana chapter.

(3) Members must be appointed for 4-year terms, except that seven of the members initially appointed shall serve terms of 2 years. Members serve at the pleasure of the governor. If a vacancy occurs, the governor shall appoint a replacement to fill the unexpired term. A member may be reappointed.

(4) A member of the committee may not receive compensation for performing the member's duties but must be reimbursed for expenses.

(5) The committee is attached to the department of public health and human services for administrative purposes only as provided in 2-15-121.

(6) The committee has the duties provided in 50-6-404.

History: En. Sec. 2, Ch. 579, L. 1995.

Cross-References

Emergency medical services, Title 50, ch. 6.

Part 23
Department of Corrections

2-15-2301. Department of corrections — head. There is a department of corrections. The department head is a director of corrections appointed by the governor in accordance with 2-15-111.

History: En. 82A-801 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-801; amd. Sec. 3, Ch. 262, L. 1991; amd. Sec. 21, Ch. 546, L. 1995.

Cross-References

Constitutional mandate for Department, Art. XII, sec. 3, Mont. Const.

2-15-2302. *(Temporary)* **Board of pardons and parole — composition — allocation — quasi-judicial.** (1) There is a board of pardons and parole.

(2) The board consists of three members and two auxiliary members, at least one of whom must have particular knowledge of Indian culture and problems. Members of the board, including the auxiliary members, must possess academic training that has qualified them for professional practice in a field such as criminology, education, psychiatry, psychology, law, social work, sociology, or guidance and counseling. Related work experience in the areas listed may be substituted for these educational requirements.

(3) An auxiliary member shall attend any meeting that a regular board member is unable to attend, and at that time, the auxiliary member has all the rights and responsibilities of a regular board member.

(4) (a) In January 1997, or as soon thereafter as possible, the governor shall appoint:

(i) one member and one auxiliary member to terms that expire in January 2001;

(ii) one member to a term that expires in January 2002; and

(iii) one auxiliary member to a term that expires in January 2003.

(b) In January 1999, the governor shall appoint one member to a term that expires in January 2003.

(5) The terms of board members and auxiliary members run with the position, and if a vacancy occurs, the governor shall appoint a person to fill the unexpired portion of the term.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(7) The board, including the auxiliary members, is designated as a quasi-judicial board for purposes of 2-15-124, except board members must be compensated as provided by legislative appropriation and the terms of board members must be staggered as provided in subsection (4).

(8) The provisions of 2-15-124(2) do not apply to the board. *(Terminates December 31, 2000—sec. 6, Ch. 420, L. 1997.)*

2-15-2302. *(Effective January 1, 2001)* **Board of pardons and parole — composition — allocation — quasi-judicial.** (1) There is a board of pardons and parole.

(2) The board consists of three members and two auxiliary members, at least one of whom must have particular knowledge of Indian culture and problems. Members of the board, including the auxiliary members, must possess academic training that has qualified them for professional practice in a field such as criminology, education, psychiatry, psychology, law, social work, sociology, or guidance and counseling. Related work experience in the areas listed may be substituted for these educational requirements.

(3) An auxiliary member shall attend any meeting that a regular board member is unable to attend, and at that time, the auxiliary member has all the rights and responsibilities of a regular board member.

(4) Board members and auxiliary members shall serve staggered 4-year terms. The governor shall appoint one member and one auxiliary member in January of the first year of the governor's term, one member in January of the second year of the governor's term, and one member and one auxiliary member in January of the third year of the governor's term.

(5) The terms of board members and auxiliary members run with the position, and if a vacancy occurs, the governor shall appoint a person to fill the unexpired portion of the term.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(7) The board, including the auxiliary members, is designated as a quasi-judicial board for purposes of 2-15-124, except board members must be compensated as provided by legislative appropriation and the terms of board members must be staggered as provided in subsection (4).

(8) The provisions of 2-15-124(2) do not apply to the board.

History: En. 82A-804 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 78, Ch. 120, L. 1974; amd. Sec. 1, Ch. 333, L. 1975; R.C.M. 1947, 82A-804; amd. Sec. 1, Ch. 574, L. 1979; amd. Sec. 1, Ch. 154, L. 1989; amd. Sec. 22, Ch. 546, L. 1995; amd. Secs. 1, 2, Ch. 420, L. 1997.

Compiler's Comments

1997 Amendment: (Temporary version) Chapter 420 in (2) increased auxiliary Board members from one to two; substituted (4) concerning provision for the appointment of specified members for terms expiring in January of the years 2001, 2002, and 2003 for "One member and the auxiliary member shall serve terms concurrent with the governor. The remaining members shall serve staggered 4-year terms"; inserted (5) relating to terms and filling vacancies; inserted (8) providing that 2-15-124(2) does not apply to the Board; and made minor changes in style. Amendment effective April 29, 1997, and terminates December 31, 2000.

(Version effective January 1, 2001) In (4) substituted provision for appointment of Board members on staggered 4-year terms for temporary language that provided for expiration of terms on specified dates. Amendment effective January 1, 2001.

Retroactive Applicability: Section 5, Ch. 420, L. 1997, provided: "The terms of members and auxiliary members appointed pursuant to [section 1] [temporary version of 2-15-2302] apply retroactively, within the meaning of 1-2-109, to January 1, 1997."

Cross-References

Probation, parole, and clemency, Title 46, ch. 23.

General duties of Board, 46-23-104.

Indian affairs — planning and coordination, Title 90, ch. 11.

2-15-2303. Repealed. Sec. 3, Ch. 495, L. 1979.

History: En. 82A-806 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 80, Ch. 120, L. 1974; R.C.M. 1947, 82A-806.

2-15-2304. Repealed. Sec. 1, Ch. 286, L. 1981.

History: En. 82A-805 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 79, Ch. 120, L. 1974; R.C.M. 1947, 82A-805.

Part 24

Department of Family Services (Renumbered and Repealed)

Part Compiler's Comments

Sections Renumbered and Repealed:

2-15-2401. Repealed. Sec. 567, Ch. 546, L. 1995.

2-15-2402. Renumbered 2-15-2214. Sec. 568, Ch. 546, L. 1995.

Histories of Repealed Sections:

2-15-2401. En. Sec. 2, Ch. 609, L. 1987.

Part 25

Department of Transportation

2-15-2501. Department of transportation — head. There is a department of transportation. The department head is the director of transportation appointed by the governor in accordance with 2-15-111. The department may have as many divisions as are necessary, but it must have divisions of:

(1) highways;
(2) aeronautics;
(3) administration;
(4) rail and transit; and
(5) motor carrier services.

History: En. 82A-701 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 204, Ch. 316, L. 1974; R.C.M. 1947, 82A-701; amd. Sec. 4, Ch. 512, L. 1991.

Cross-References

Highway revenue nondiversion, Art. VIII, sec. 6, Mont. Const.

Highways and Transportation, Title 60.

General powers and duties of Department, Title 60, ch. 2, part 2.

Motor Vehicles, Title 61.

Motor vehicles — size, weight, and loads, Title 61, ch. 10.

2-15-2502. Transportation commission. (1) There is a transportation commission composed of five members. One member must be a resident of and appointed from each of these districts, each composed of the counties named:

(a) District 1. Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Ravalli, Granite, Powell;

(b) District 2. Deer Lodge, Silver Bow, Beaverhead, Madison, Gallatin, Meagher, Broadwater, Jefferson, Park;

(c) District 3. Glacier, Toole, Liberty, Hill, Blaine, Pondera, Teton, Chouteau, Cascade, Lewis and Clark;

(d) District 4. Carter, Powder River, Fallon, Custer, Rosebud, Garfield, Phillips, Valley, McCone, Prairie, Dawson, Wibaux, Richland, Roosevelt, Daniels, Sheridan;

(e) District 5. Golden Valley, Stillwater, Carbon, Big Horn, Yellowstone, Musselshell, Judith Basin, Fergus, Petroleum, Treasure, Wheatland, Sweet Grass.

(2) Two members may not be residents of the same district at the time of appointment or during their respective terms of office.

(3) Not more than three members may at the time of appointment or during their respective terms be members of the same political party.

(4) An elective state official or state officer, during the term of office to which elected or appointed, or a state employee may not be a member of the commission.

(5) A resolution, motion, or other decision of the commission may not be adopted or passed without the favorable vote of at least three members.

(6) The commission is allocated to the department of transportation for administrative purposes only as prescribed in 2-15-121.

(7) The commission is designated as a quasi-judicial board for purposes of 2-15-124; however, the provision of 2-15-124(1) that at least one member of a quasi-judicial board be an attorney does not apply to the commission.

(8) The commission may adopt rules necessary for its government.

(9) The director of transportation or the director's designee shall act as liaison between the commission and the department.

History: En. Sec. 4-102, Ch. 197, L. 1965; Sec. 32-2402, R.C.M. 1947; amd. and redes. 82A-706.1 by Sec. 72, Ch. 316, L. 1974; amd. Sec. 2, Ch. 186, L. 1977; R.C.M. 1947, 82A-706.1; amd. Sec. 1, Ch. 62, L. 1983; amd. Sec. 5, Ch. 512, L. 1991; amd. Sec. 7, Ch. 87, L. 1993; amd. Sec. 1, Ch. 75, L. 1995.

Cross-References

Highways and Transportation, Title 60.

General provisions — Transportation Commission, Title 60, ch. 2, part 1.

2-15-2503 and 2-15-2504 reserved.

2-15-2505. Purpose. (1) The legislature intends, through the creation of a department of transportation within the executive branch of state government, to:

(a) provide the means to plan for the present and future transportation needs of the citizens of Montana;

(b) assure that transportation remains a viable element in the private sector of the economy; and

(c) provide energy-efficient and ecologically compatible transportation services with optimum efficiency, effectiveness, and economy.

(2) It is the policy of the state of Montana that adequate, safe, and efficient transportation facilities and services of all modes are essential to the economic growth of the state and the well-being of its people and that the planning and

development of those facilities and services be coordinated by a department of transportation that has overall responsibility for balanced transportation policy and planning.

History: En. Sec. 1, Ch. 512, L. 1991.

2-15-2506. Board of aeronautics — qualification — allocation — quasi-judicial. (1) There is a board of aeronautics.

(2) The board consists of nine members. The members are:

(a) one member of the Montana pilots' association;

(b) one member of the Montana chamber of commerce;

(c) one representative of the Montana airport management association;

(d) one member of the Montana county commissioners association or the Montana league of cities and towns;

(e) one person actively engaged in aviation education in this state;

(f) one person representative of interstate commercial airline operators, who must at the time of appointment be an employee or official of an interstate commercial airline operator and a resident of this state;

(g) one person representing the general public;

(h) one member of the association of Montana aerial applicators; and

(i) one person who must at the time of appointment be an active fixed base operator in this state, or an official of a fixed base operator in this state, of flying services or flying schools.

(3) The board is allocated to the department of transportation for administrative purposes only as prescribed in 2-15-121.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124.

(5) The administrator of the aeronautics division shall act as liaison between the board and the department of transportation.

History: En. 82A-905 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 104, Ch. 348, L. 1974; R.C.M. 1947, 82A-905; MCA 1979, 2-15-1103; redes. 2-15-1812 by Sec. 12, Ch. 274, L. 1981; amd. Sec. 3, Ch. 685, L. 1983; amd. Sec. 7, Ch. 512, L. 1991; Sec. 2-15-1812, MCA 1989; redes. 2-15-2506 by Sec. 17, Ch. 512, L. 1991; amd. Sec. 1, Ch. 394, L. 1993.

Cross-References

Board of Aeronautics — functions, 67-1-103.

Part 26

Department of Public Service Regulation

2-15-2601. Department of public service regulation — head. There is a department of public service regulation. The department head is the public service commission provided for in 2-15-2602.

History: En. 82A-1701 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1701.

Cross-References

Representation of consumer interests — Consumer Counsel, Art. XIII, sec. 2, Mont. Const.; Title 69, ch. 2, part 2.

Public Utilities and Carriers, Title 69.

2-15-2602. Public service commission — composition. (1) There is a public service commission as provided in Title 69, chapter 1, part 1.

(2) The composition, method of selection, and terms of office of members of the commission are as prescribed in Title 69, chapter 1, part 1.

History: En. 82A-1702 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1702(part).

Cross-References

Tax credit for interest differential to financial institutions for loans to energy utility for energy conservation, 15-32-107.

Public Utilities and Carriers, Title 69.

Public Service Commission — administration, Title 69, ch. 1, part 1.

Public Service Commission — role and duties, Title 69, ch. 2, part 1.

Parts 27 through 29 reserved

Part 30

Department of Agriculture

2-15-3001. Department of agriculture — head. There is a department of agriculture. The department head is a director of agriculture appointed by the governor in accordance with 2-15-111.

History: En. 82A-301 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 141, Ch. 218, L. 1974; R.C.M. 1947, 82A-301.

Cross-References

Constitutional requirement for Department, Art. XII, sec. 1, Mont. Const.

Agriculture, Title 80.

Department of Agriculture, Title 80, ch. 1, part 1.

2-15-3002. Montana wheat and barley committee — composition — allocation. (1) There is a Montana wheat and barley committee.

(2) The committee consists of seven members and three ex officio, nonvoting members.

(3) The governor shall appoint one member from each of the following districts:

(a) District I, consisting of Daniels, Sheridan, and Roosevelt Counties;

(b) District II, consisting of Valley, Phillips, Blaine, and Hill Counties;

(c) District III, consisting of Liberty, Toole, Glacier, and Pondera Counties;

(d) District IV, consisting of Chouteau and Teton Counties;

(e) District V, consisting of Lewis and Clark, Cascade, Judith Basin, Fergus, Petroleum, Meagher, Broadwater, Wheatland, Golden Valley, and Musselshell Counties;

(f) District VI, consisting of Big Horn, Yellowstone, Stillwater, Carbon, Sweet Grass, Park, Gallatin, Madison, Jefferson, Silver Bow, Beaverhead, and all counties west of the continental divide;

(g) District VII, consisting of Garfield, McCone, Rosebud, Richland, Dawson, Wibaux, Prairie, Carter, Custer, Fallon, Powder River, and Treasure Counties.

(4) The ex officio members are:

(a) the director of the department of agriculture;

(b) the dean of agriculture of Montana state university-Bozeman;

(c) a representative of the grain trade in Montana elected by a majority of the appointed members.

(5) Each of the appointed members must be a citizen of Montana, derive a substantial portion of his income from growing wheat or barley in this state, and be a resident of and have farming operations in the district from which

appointed. No more than four of the appointed members may be of the same political party.

(6) A list of nominees for appointment may be submitted to the governor by the Montana farmers union, Montana farm bureau, Montana grange, Montana women involved in farm economics, and the Montana grain growers association. Names of nominees must be submitted not more than 90 days but not less than 30 days before the expiration of a committeeman's term.

(7) The appointed members shall serve staggered terms of 3 years. A member may not serve more than three consecutive 3-year terms.

(8) A member may be removed by the governor, after a full public hearing before the governor, for malfeasance, misfeasance, or neglect of duty. Removal proceedings may not be started except upon duly verified written charges. The member must be given a copy of the written charges at least 10 days in advance of the hearing. At the hearing, the member may be represented by an attorney and may present witnesses in his behalf.

(9) A member who ceases to reside in the state or in the district from which he was appointed or who ceases to grow wheat or barley in the state or district is disqualified from membership and his office becomes vacant. If the member refuses to recognize his disqualification, the refusal is cause for removal.

(10) The committee is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: En. 82A-304 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 143, Ch. 218, L. 1974; amd. Sec. 8, Ch. 71, L. 1975; R.C.M. 1947, 82A-304; amd. Sec. 1, Ch. 48, L. 1987; amd. Sec. 1, Ch. 215, L. 1989; amd. Sec. 1, Ch. 507, L. 1991; amd. sec. 36, Ch. 308, L. 1995.

Cross-References

Wheat and barley research and marketing, Title 80, ch. 11, part 2.

2-15-3003. Board of hail insurance. (1) There is a board of hail insurance of five members consisting of the state auditor, the director of agriculture, who is secretary of the board, and three other members to be appointed by the governor and confirmed by the senate.

(2) The governor shall designate one of the appointive members to act as chairman of the board.

(3) Whenever the term of any member expires, either by death, resignation, removal for cause, or expiration of his term of office, the governor shall appoint his successor and shall also appoint one of the board for chairman in case of a vacancy in that office.

(4) Each appointive member of the board shall be appointed for 3 years, except when such appointment is made to fill a vacancy on the board, in which event such appointee shall fill out the unexpired term of the member whose place he fills.

(5) All members of the board shall be subject to removal for cause by the governor.

(6) The board is allocated to the department of agriculture for administrative purposes only as prescribed in 2-15-121. The department may charge the board for services provided by the department pursuant to 2-15-121. The costs charged by the department must be commensurate with the cost of the services provided.

History: **(1) thru (5)En. Sec. 1, Ch. 169, L. 1917; amd. Sec. 1, Ch. 17, Ex. L. 1918; amd. Sec. 1, Ch. 141, L. 1921; re-en. Sec. 350, R.C.M. 1921; amd. Sec. 1, Ch. 40, L. 1923; re-en. Sec. 350, R.C.M. 1935; amd. Sec. 58, Ch. 391, L. 1973; amd. Sec. 140, Ch. 218, L. 1974; amd. Sec. 2, Ch. 468, L. 1977; Sec. 82-1501, R.C.M. 1947; (6)En. Sec. 1, Ch. 395, L. 1973; Sec. 82A-304.1, R.C.M. 1947; R.C.M. 1947, 82-1501(part), 82A-304.1; amd. Sec. 23, Ch. 184, L. 1979; amd. Sec. 3, Ch. 691, L. 1983.**

Cross-References

Hail insurance, Title 80, ch. 2, part 2.

2-15-3004. Montana alfalfa seed committee — composition — allocation. (1) There is a Montana alfalfa seed committee composed of eight members as follows:

(a) five members appointed by the governor who are citizens of Montana and who are actively engaged in the growing of alfalfa seed within the state, deriving a substantial portion of their income from handling, packing, shipping, buying, or selling alfalfa seed, or acting as a broker or factor of alfalfa seed. These five members must be compensated as provided in 80-11-305.

(b) two members appointed by the governor who are citizens of Montana and who are actively engaged in the growing of alfalfa seed within the state and the rearing of alfalfa leaf-cutting bees. Each member must be compensated from the enterprise fund established in 80-6-1109 at $25 for each day in which the member is engaged in the official business of the committee, plus expenses as provided for in 2-18-501 through 2-18-503.

(c) the director of the department of agriculture or the director's authorized representative.

(2) A list of nominees for appointment may be submitted to the governor by the Montana alfalfa seed association, the Montana seed trade association, the Montana seed growers association, and any other organization representing alfalfa seed growers or dealers. Names of nominees must be submitted at least 91 days before the expiration of a committee member's term. The governor shall appoint members from among the persons nominated.

(3) The appointed members serve staggered terms of 3 years. The initial appointments are as follows: two members for 1-year terms, two members for 2-year terms, and three members for 3-year terms.

(4) The committee is allocated to the department of agriculture for administrative purposes only as prescribed in 2-15-121.

History: **En. Sec. 1, Ch. 405, L. 1981; amd. Sec. 1, Ch. 4, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 4 in (1), in introductory clause, substituted "eight" for "seven"; inserted (1)(a) and (1)(b) regarding appointment and compensation of Committee members; at end of (1)(c) deleted "shall be an ex officio, nonvoting member of the committee"; deleted former (2) that read: "(2) Each of the appointed members shall be a citizen of Montana actively engaged in the growing of alfalfa seed within the state or deriving a substantial portion of his income from handling, packing, shipping, buying, or selling alfalfa seed or acting as a broker or factor of alfalfa seed. These qualifications of members must continue during their terms of office"; and made minor changes in style. Amendment effective July 1, 1997.

2-15-3005. Repealed. Sec. 3, Ch. 4, L. 1997.

History: **En. Sec. 4, Ch. 331, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 167, L. 1989; amd. sec. 36, Ch. 308, L. 1995.**

2-15-3006. Montana mint committee — composition — allocation. (1) There is a Montana mint committee composed of six members. The members include the director of the department of agriculture and five members appointed by the governor.

(2) Each of the five appointed members must be a citizen of Montana who is actively involved in the growing of mint in this state, and one of the appointed members must be a member of or otherwise represent the mint industry research council. The qualifications of members must continue during their terms of office.

(3) A list of nominees for appointment must be submitted to the governor by Montana associations representing mint growers. Names of nominees must be submitted at least 91 days before the expiration of a committee member's term. The governor shall appoint members from among the persons nominated.

(4) Appointed members shall serve staggered terms of 3 years. Initial appointment must be as follows:

(a) one member for a 1-year term;

(b) two members for 2-year terms; and

(c) two members for a 3-year term.

(5) The committee is allocated to the department of agriculture for administrative purposes only as prescribed in 2-15-121.

History: En. Sec. 1, Ch. 182, L. 1989; amd. Sec. 1, Ch. 102, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 102 in (1), in first sentence, increased committee from five to six members and in second sentence increased gubernatorial appointees from four to five; in (2), in first sentence, increased mint-growing members from four to five and at end inserted "and one of the appointed members must be a member of or otherwise represent the mint industry research council"; and in (4)(c) increased members from one to two.

Cross-References

Mint and mint oil production, Title 80, ch. 11, part 4.

2-15-3007 through 2-15-3010 reserved.

2-15-3011. Repealed. Sec. 5, Ch. 168, L. 1991.

History: En. Sec. 1, Ch. 580, L. 1983.

2-15-3012 through 2-15-3014 reserved.

2-15-3015. Montana agriculture development council. (1) There is a Montana agriculture development council. The council is allocated to the department of agriculture for administrative purposes only, as provided in 2-15-121.

(2) The council is composed of seven members appointed by the governor, including the director of the department of agriculture, the director of the department of commerce, and five members who are or have been actively engaged in agriculture. Members shall serve staggered 3-year terms commencing on July 1 of each year of appointment.

History: En. Sec. 1, Ch. 665, L. 1987; amd. Sec. 1, Ch. 4, L. 1989; Sec. 2-15-1817, MCA 1987; redes. 2-15-3015 by Code Commissioner, 1989.

Cross-References

Montana Growth Through Agriculture Act, Title 90, ch. 9.

Powers and duties of Council, 90-9-202, 90-9-203.

Part 31

Department of Livestock

2-15-3101. Department of livestock — head. There is a department of livestock. The department head is the board of livestock provided for in 2-15-3102.

History: En. 82A-1301 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1301.

Cross-References

Special levies on livestock for research and disease and predator control authorized, Art. XII, sec. 1(2), Mont. Const.

Livestock, Title 81.

Department of Livestock, Title 81, ch. 1, 2.

2-15-3102. Board of livestock — composition. (1) There is a board of livestock.

(2) The board consists of seven members appointed by the governor with the consent of the senate. Each member must be a resident of the state and an active livestock producer. A member must be appointed upon the recommendation of the related industry and must have the following qualifications:

(a) four are cattle producers;

(b) one is a dairy producer representing the dairy and poultry industry;

(c) one is a swine producer; and

(d) one is a sheep producer.

(3) An appointee is vested with all the powers and duties of office before being confirmed by the senate, as are directors in 2-15-111(2).

(4) The governor shall designate the presiding officer of the board.

(5) A member shall serve for a term of 6 years.

(6) Members of the board must be reimbursed and compensated as are members of quasi-judicial boards in 2-15-124(7).

History: En. 82A-1303 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 198, Ch. 310, L. 1974; amd. Sec. 1, Ch. 393, L. 1975; R.C.M. 1947, 82A-1303; amd. Sec. 7, Ch. 52, L. 1993.

Cross-References

Livestock, Title 81.

Department of Livestock — generally, Title 81, ch. 2, part 1.

Bounty claims for wild animals, 87-1-206.

2-15-3103. Repealed. Sec. 1, Ch. 21, L. 1995.

History: En. 82A-1306 by Sec. 3, Ch. 484, L. 1975; R.C.M. 1947, 82A-1306(part).

2-15-3104. Livestock crimestoppers commission. (1) There is a livestock crimestoppers commission.

(2) The commission consists of five members appointed by the chairman of the board of livestock. The members are:

(a) the administrator of the brands enforcement division, or his designee;

(b) a member of the board of livestock, or his designee;

(c) a law enforcement official; and

(d) two members of the public, appointed at large.

(3) The commission shall elect a chairman from its members.

(4) A member must be appointed for a term of 2 years and may be reappointed.

(5) (a) A vacancy must be filled within 14 days of occurrence in the same manner as the original appointment.

(b) A vacancy does not impair the right of the remaining members to exercise the powers of the commission.

(6) The commission is allocated to the department of livestock for administrative purposes only as provided in 2-15-121.

History: En. Sec. 3, Ch. 571, L. 1983.

Cross-References

Commission and Department powers and duties, 81-6-311, 81-6-313.

2-15-3105. Board of milk control — membership — allocation — quasi-judicial. (1) There is a board of milk control.

(2) The board consists of five members. A member may not be connected in any way with the production, processing, distribution, or wholesale or retail sale of milk or dairy products. A member may not have held an elective or appointive public office during the 2 years immediately preceding appointment, and a member may not hold a public office, either elective or appointive, during a term on the board. Not more than three members may be of the same political party.

(3) The board is allocated to the department of livestock for administrative purposes only as prescribed in 2-15-121.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124.

History: En. 82A-406 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 143, Ch. 431, L. 1975; R.C.M. 1947, 82A-406; amd. Sec. 2, Ch. 52, L. 1993; amd. Sec. 1, Ch. 333, L. 1995; Sec. 2-15-1802, MCA 1993; redes. 2-15-3105, Sec. 9, Ch. 333, L. 1995.

Cross-References

Milk price control, Title 81, ch. 23.

Part 32

Department of State Lands (Repealed)

2-15-3201. Repealed. Sec. 500, Ch. 418, L. 1995.

History: En. 82A-1101 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 113, Ch. 428, L. 1973; R.C.M. 1947, 82A-1101.

2-15-3202. Repealed. Sec. 500, Ch. 418, L. 1995.

History: En. 82A-1104 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 115, Ch. 428, L. 1973; R.C.M. 1947, 82A-1104.

2-15-3203. Terminated. Sec. 15, Ch. 460, L. 1987.

History: En. Sec. 6, Ch. 460, L. 1987.

2-15-3204. Repealed. Sec. 85, Ch. 10, L. 1993.

History: En. Sec. 4, Ch. 691, L. 1989.

2-15-3205. Repealed. Sec. 85, Ch. 10, L. 1993.

History: En. Sec. 5, Ch. 691, L. 1989.

Part 33

Department of Natural Resources and Conservation

2-15-3301. Department of natural resources and conservation — head. There is a department of natural resources and conservation. The department head is the director of natural resources and conservation appointed by the governor in accordance with 2-15-111.

History: En. 82A-1501 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 114, Ch. 253, L. 1974; R.C.M. 1947, 82A-1501.

Cross-References

Environment and natural resources, Art. IX, Mont. Const.

Water resources, Art. IX, sec. 3, Mont. Const.; Title 85, ch. 1.

Cooperative agreements with district weed boards, 7-22-2151.

Environmental contingency grant program, Title 75, ch. 1, part 11.

Major facility siting, Title 75, ch. 20.

Floodplain and floodway management, Title 76, ch. 5.

Fire protection of natural resources, Title 76, ch. 11, part 1.

Timber resources, Title 76, ch. 13.

Conservation districts, Title 76, ch. 15.

Grazing districts, Title 76, ch. 16.

State Lands, Title 77.

State building energy conservation program, Title 90, ch. 4, part 6.

2-15-3302. Repealed. Sec. 500, Ch. 418, L. 1995.

History: En. 82A-1509 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 384, L. 1973; amd. Sec. 117, Ch. 253, L. 1974; R.C.M. 1947, 82A-1509.

2-15-3303. Board of oil and gas conservation — composition — allocation — quasi-judicial. (1) There is a board of oil and gas conservation.

(2) The board consists of seven members, three of whom shall be from the oil and gas industry and have had at least 3 years' experience in the production of oil and gas and two of whom shall be landowners residing in oil or gas producing counties of the state but not actively associated with the oil and gas industry, but one of the two landowners shall be one who owns the mineral rights with the surface and the other shall be one who does not own the mineral rights.

(3) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply. The board may also prescribe the duties and annual salary of four professional staff positions.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124.

History: En. 82A-1508 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 116, Ch. 253, L. 1974; R.C.M. 1947, 82A-1508; amd. Sec. 1, Ch. 412, L. 1979; amd. Sec. 1, Ch. 679, L. 1979.

Cross-References

Oil and gas conservation, Title 82, ch. 11.

2-15-3304. State coordinator for rangeland resources. The department shall maintain and staff the office of state coordinator for the rangeland resources act.

History: En. 76-304 by Sec. 4, Ch. 408, L. 1977; R.C.M. 1947, 76-304(1).

Cross-References

Montana Rangeland Resources Act, Title 76, ch. 14.

Duty of Coordinator, 76-14-105.

2-15-3305. Rangeland resources committee. (1) The governor may select a committee of six members in accordance with subsection (2) which is composed as follows:

(a) a chairman who is a rancher;

(b) a vice-chairman who is a rancher;

(c) a rancher from the eastern area of the state;

(d) a rancher from the northern area of the state;

(e) a rancher from the area of the state west of the continental divide;

(f) a rancher from the southern area of the state.

(2) The governor shall select the members described in subsections (1)(a) through (1)(f) from a list submitted by the executive committee of the association of conservation districts and the board of directors of the Montana association of state grazing districts.

(3) The committee members shall serve without compensation.

(4) All persons appointed to the committee shall serve at the pleasure of the governor.

(5) The committee is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: En. 76-305, 76-306 by Secs. 5, 6, Ch. 408, L. 1977; R.C.M. 1947, 76-305, 76-306; amd. Sec. 24, Ch. 184, L. 1979; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 44, L. 1985.

Cross-References

Duties of Committee, 76-14-106, 76-14-116.

Rangeland resources, Title 76, ch. 14.

2-15-3306. Repealed. Sec. 500, Ch. 418, L. 1995.

History: En. Sec. 4, Ch. 358, L. 1979.

2-15-3307. Board of water well contractors. (1) There is a board of water well contractors.

(2) The board is composed of five voting members, consisting of:

(a) one technical adviser who is a hydrogeologist appointed by the Montana bureau of mines and geology;

(b) two licensed Montana water well contractors appointed by the governor with the concurrence of the senate;

(c) one member appointed by the director of environmental quality; and

(d) one member appointed by the director of natural resources and conservation.

(3) The members of the board must have been bona fide residents of this state for a period of a least 3 years prior to such appointment.

(4) The members of the board shall serve for terms of 3 years. In case of a vacancy in the office of a member of the board, an appointment must be made to fill the vacancy in the manner prescribed by the constitution and laws of this state.

(5) The members of the board shall, upon entering on the duties of their office, take and subscribe to the oath specified in the constitution of Montana, and the oath must be filed in the office of the secretary of state.

(6) The board is allocated to the department of natural resources and conservation for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (5)En. 82A-1602.26 by Sec. 3, Ch. 232, L. 1974; Sec. 361, Ch. 350, L. 1974; Sec. 82A-1602.26, R.C.M. 1947; (6)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.26(1) thru (3); MCA 1979, 2-15-1632; redes. 2-15-1862 by Sec. 4, Ch. 274, L. 1981; Sec. 2-15-1862, MCA 1983; redes. 2-15-3307 by Code Commissioner, pursuant to Sec. 12, Ch. 728, L. 1985; amd. Sec. 18, Ch. 418, L. 1995.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.; 2-16-211; 2-16-212.

Application of Montana Administrative Procedure Act to licensing, 2-4-631.

Disasters and emergencies — emergency reciprocity for persons licensed out of state, 10-3-204.

General duties of boards, 37-1-131.

Licensure of former criminal offenders, Title 37, ch. 1, part 2.

Water well contractors, Title 37, ch. 43.

Nondiscrimination in licensing, 49-3-204.

2-15-3308. Drought advisory committee. (1) There is a drought advisory committee in the department of natural resources and conservation.

(2) The drought advisory committee is chaired by a representative of the governor and consists of representatives of the departments of natural resources and conservation; agriculture; commerce; fish, wildlife, and parks; military affairs; environmental quality; and livestock. The governor's representative must be appointed by the governor, and the representative of each department must be appointed by the head of that department. Additional, nonvoting members who represent drought-affected federal and local government agencies and public and private interests may also be appointed by the governor.

(3) The drought advisory committee shall:

(a) with the approval of the governor, develop and implement a state drought plan;

(b) review and report drought monitoring information to the public;

(c) coordinate timely drought impact assessments;

(d) identify areas of the state with a high probability of drought and target reporting and assistance efforts to those areas;

(e) upon request, assist in organizing local drought advisory committees for the areas identified under subsection (3)(d);

(f) request state agency staff to provide technical assistance to local drought advisory committees; and

(g) promote ideas and activities for groups and individuals to consider that may reduce drought vulnerability.

(4) The drought advisory committee shall meet, at a minimum, on or around October 15 and February 15 of each year to assess moisture conditions and, as appropriate, begin preparations for drought mitigation.

(5) By March 15 of each year, the drought advisory committee shall submit a report to the governor describing the potential for drought in the coming year. If the potential for drought merits additional activity by the drought advisory committee, the report must also describe:

(a) activities to be taken by the drought advisory committee for informing the public about the potential for drought;

(b) a schedule for completing activities;

(c) geographic areas for which the creation of local drought advisory committees will be suggested to local governments and citizens; and

(d) requests for the use of any available state resources that may be necessary to prevent or minimize drought impacts.

(6) Nothing in this section is intended to remove or interfere with the duties and responsibilities of the governor or the division of disaster and emergency services for disaster coordination and emergency response, as provided in Title 10, chapter 3, part 1. The duties and responsibilities of the drought advisory committee supplement and are consistent with those of the

division of disaster and emergency services for drought planning, preparation, coordination, and mitigation.

History: En. Sec. 1, Ch. 209, L. 1991; amd. Sec. 19, Ch. 418, L. 1995.

Part 34
Department of Fish, Wildlife, and Parks

2-15-3401. Department of fish, wildlife, and parks — head. There is a department of fish, wildlife, and parks. The department head is the director of fish, wildlife, and parks appointed by the governor in accordance with 2-15-111. The director is the secretary of the commission.

History: En. 82A-2001 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 417, L. 1977; R.C.M. 1947, 82A-2001; amd. Secs. 1, 2, Ch. 218, L. 1979.

Cross-References

State parks, Title 23, ch. 1.

Recreational use of streams, Title 23, ch. 2, part 3.

Fish and Wildlife, Title 87.

Department of Fish, Wildlife, and Parks, Title 87, ch. 1, part 2.

2-15-3402. Fish, wildlife, and parks commission — composition — qualifications — quasi-judicial. (1) There is a fish, wildlife, and parks commission.

(2) The commission consists of five members. At least one member must be experienced in the breeding and management of domestic livestock. The governor shall appoint one member from each of the following districts:

(a) District No. 1, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite, and Lewis and Clark Counties;

(b) District No. 2, consisting of Deer Lodge, Silver Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin, Park, and Sweet Grass Counties;

(c) District No. 3, consisting of Glacier, Toole, Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith Basin, Fergus, Blaine, Meagher, and Wheatland Counties;

(d) District No. 4, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Petroleum, Garfield, McCone, Richland, Dawson, and Wibaux Counties;

(e) District No. 5, consisting of Golden Valley, Musselshell, Stillwater, Carbon, Yellowstone, Big Horn, Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and Prairie Counties.

(3) Appointments must be made without regard to political affiliation and must be made solely for the wise management of the fish, wildlife, and state parks and other outdoor recreational resources of this state. A person may not be appointed to the commission unless he is informed or interested and experienced in the subject of wildlife, fish, parks, and outdoor recreation and the requirements for the conservation and protection of wildlife, fish, parks, and outdoor recreational resources.

(4) A vacancy occurring on the commission must be filled by the governor in the same manner and from the district in which the vacancy occurs.

(5) The fish, wildlife, and parks commission is designated as a quasi-judicial board for purposes of 2-15-124. Notwithstanding the provisions of 2-15-124(1), the governor is not required to appoint an attorney to serve as a member of the commission.

History: En. 82A-2004 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 56, Ch. 511, L. 1973; amd. Sec. 2, Ch. 417, L. 1977; R.C.M. 1947, 82A-2004; amd. Sec. 1, Ch. 379, L. 1979; amd. Sec. 1, Ch. 28, L. 1991.

Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.

Fish and Wildlife, Title 87.

Commission — general powers and duties, Title 87, ch. 1, part 3.

2-15-3403. Renumbered 2-15-1883. Sec. 11, Ch. 528, L. 1987.

2-15-3404. Fish, wildlife, and parks crimestoppers board. (1) There is a fish, wildlife, and parks crimestoppers board.

(2) (a) The board consists of five members, four of whom are appointed by the director of the department of fish, wildlife, and parks, as follows:

(i) a person within the department responsible for the enforcement of fish and wildlife laws;

(ii) a member of a hunter's, angler's, or conservation group;

(iii) a member who is actively engaged in agricultural production; and

(iv) a member of the public with an interest in parks and recreation.

(b) The fifth member is a member of the fish, wildlife, and parks commission who must be designated by the commission.

(3) The board shall elect a presiding officer from its members.

(4) A member must be appointed for a term of 2 years and may be reappointed.

(5) (a) A vacancy must be filled within 14 days of occurrence in the same manner as the original appointment.

(b) A vacancy does not impair the right of the remaining members to exercise the powers of the board.

(6) The board is allocated to the department of fish, wildlife, and parks for administrative purposes only as provided in 2-15-121.

History: En. Sec. 7, Ch. 305, L. 1985; amd. Sec. 2, Ch. 28, L. 1991; amd. Sec. 1, Ch. 393, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 393 in (1) inserted "and parks"; in (2)(a)(ii) substituted "hunter's, angler's" for "sportsmen's"; in (2)(a)(iv) substituted "a member of the public with an interest in parks and recreation" for "a member of the public, appointed at large"; and made minor changes in style. Amendment effective April 28, 1997.

2-15-3405. Appointment of wetlands protection advisory council. (1) The director of fish, wildlife, and parks shall appoint an advisory council pursuant to 2-15-122 to review proposals developed by the department of fish, wildlife, and parks which involve the use of money received by the department under 87-2-412 for the protection, conservation, and development of wetlands in Montana.

(2) Members must be appointed to the advisory council who represent Montana sportsmen, nonconsumptive users of wildlife, and the agricultural industry.

History: En. Sec. 3, Ch. 609, L. 1985.

Cross-References

Aquatic ecosystem protections, Title 75, ch. 7.

Part 35
Department of Environmental Quality

2-15-3501. Department of environmental quality — head. There is a department of environmental quality. The department head is the director of environmental quality appointed by the governor in accordance with 2-15-111.

History: En. Sec. 20, Ch. 418, L. 1995.

Cross-References

Environmental Protection, Title 75.

2-15-3502. Board of environmental review. (1) There is a board of environmental review.

(2) The board consists of seven members appointed by the governor. The members must be representative of the geographic areas of the state. One member must have expertise or background in hydrology. One member must have expertise or background in local government planning. One member must have expertise or background in one of the environmental sciences. One member must have expertise or background as a county health officer or as a medical doctor.

(3) A vacancy occurring on the board must be filled by the governor in the same manner and from the same representative area as the original appointment.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124.

(5) The board is attached to the department of environmental quality for administrative purposes only as provided in 2-15-121.

History: En. Sec. 21, Ch. 418, L. 1995.

CHAPTER 16
PUBLIC OFFICERS

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Chapter Cross-References

Elected official's business disclosure statement, 2-2-106.

Part 1

General Provisions

2-16-101. Classification of public officers. (1) The public officers of this state are classified as follows:

(a) legislative;

(b) executive;

(c) judicial;

(d) ministerial officers and officers of the courts.

(2) This classification is not to be construed as defining the legal powers of either class.

(3) Executive officers are either:

(a) civil; or

(b) military.

History: (1), (2)En. Sec. 140, Pol. C. 1895; re-en. Sec. 49, Rev. C. 1907; re-en. Sec. 50, R.C.M. 1921; Cal. Pol. C. Sec. 220; re-en. Sec. 50, R.C.M. 1935; Sec. 59-101, R.C.M. 1947; (3)En. Sec. 330, Pol. C. 1895; re-en. Sec. 125, Rev. C. 1907; re-en. Sec. 109, R.C.M. 1921; Cal. Pol. C. Sec. 341; re-en. Sec. 109, R.C.M. 1935; Sec. 59-201, R.C.M. 1947; R.C.M. 1947, 59-101, 59-201.

Cross-References

Separation of powers, Art. III, sec. 1, Mont. Const.

2-16-102. Qualifications generally — age and citizenship. (1) Provisions respecting disqualifications for particular offices are contained in the constitution and in the provisions of the codes concerning the various offices.

(2) No person is eligible to hold civil office in this state who at the time of his election or appointment is not of the age of 18 years or older and a citizen of this state.

History: (1)En. Sec. 961, Pol. C. 1895; re-en. Sec. 343, Rev. C. 1907; re-en. Sec. 411, R.C.M. 1921; Cal. Pol. C. Sec. 842; re-en. Sec. 411, R.C.M. 1935; Sec. 59-302, R.C.M. 1947; (2)En. Sec. 960, Pol. C. 1895; re-en. Sec. 342, Rev. C. 1907; re-en. Sec. 410, R.C.M. 1921; Cal. Pol. C. Sec. 841; re-en. Sec. 410, R.C.M. 1935; amd. Sec. 14, Ch. 240, L. 1971; amd. Sec. 1, Ch. 9, L. 1973; amd. Sec. 21, Ch. 94, L. 1973; Sec. 59-301, R.C.M. 1947; R.C.M. 1947, 59-301, 59-302.

Cross-References

Eligibility for public office, Art. IV, sec. 4, Mont. Const.

Qualifications for Legislature, Art. V, sec. 4, Mont. Const.

Qualifications for elected executive officers, Art. VI, sec. 3, Mont. Const.

Qualifications for Supreme Court Justices and District Court Judges, Art. VII, sec. 9, Mont. Const.

2-16-103 through 2-16-110 reserved.

2-16-111. Residence of officers. (1) The following officers must reside and keep their offices at the seat of government: the governor, secretary of state, state auditor, attorney general, superintendent of public instruction, justices of the supreme court, and clerk of the supreme court.

(2) Restrictions upon the residence of other officers are contained in the chapter or part relating to the respective officers.

History: (1)En. Sec. 970, Pol. C. 1895; re-en. Sec. 345, Rev. C. 1907; re-en. Sec. 413, R.C.M. 1921; Cal. Pol. C. Sec. 852; re-en. Sec. 413, R.C.M. 1935; amd. Sec. 3, Ch. 468, L. 1977; Sec. 59-304, R.C.M. 1947; (2)En. Sec. 974, Pol. C. 1895; re-en. Sec. 349, Rev. C. 1907; re-en. Sec. 417, R.C.M. 1921; re-en. Sec. 417, R.C.M. 1935; Sec. 59-308, R.C.M. 1947; R.C.M. 1947, 59-304, 59-308.

Cross-References

Residence requirements for judges, Art. VII, sec. 9(4), Mont. Const.

Residence — rules for determining, 1-1-215.

2-16-112. Absence from the state. No officer mentioned in 2-16-111(1) and no officer appointed by the governor and confirmed by the senate must absent himself from the state for more than 60 consecutive days unless upon business of the state or with the consent of the legislature.

History: En. Sec. 971, Pol. C. 1895; re-en. Sec. 346, Rev. C. 1907; re-en. Sec. 414, R.C.M. 1921; Cal. Pol. C. Sec. 853; re-en. Sec. 414, R.C.M. 1935; R.C.M. 1947, 59-305.

Cross-References

Vacancy in office created by absence from state, 2-16-501.

Absence for military service — no vacancy in office, 10-2-228.

2-16-113. Seals. (1) Each of the executive and state officers of the state must have a seal. Such seal must contain the same representations and motto as is found on the great seal and must be 2 inches in diameter, surrounded by the words "State of Montana" (giving the title of the office, "Secretary of State", etc.).

(2) An impression of the seal of executive and state officers must be filed in the office of the secretary of state.

History: En. Sec. 1131, Pol. C. 1895; re-en. Sec. 431, Rev. C. 1907; re-en. Sec. 527, R.C.M. 1921; re-en. Sec. 527, R.C.M. 1935; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 19-112.

Cross-References

Description of great seal, 1-1-501.

Duty of Secretary of State to keep descriptions of seals, 2-15-401.

2-16-114. Facsimile signatures and seals. (1) As used in this section, the following definitions apply:

(a) "Authorized officer" means any official of this state or any of its departments, agencies, public bodies, or other instrumentalities or any of its political subdivisions whose signature to a public security or instrument of payment is required or permitted.

(b) "Facsimile signature" means a reproduction by engraving, imprinting, stamping, or other means of the manual signature of an authorized officer.

(c) "Instrument of payment" means a check, draft, warrant, or order for the payment, delivery, or transfer of funds.

(d) "Public security" means a bond, note, certificate of indebtedness, or other obligation for the payment of money issued by this state or by any of its departments, agencies, public bodies, or other instrumentalities or by any of its political subdivisions.

(2) Any authorized officer, after filing with the secretary of state or, in the case of officers of any city, town, county, school district, or other political subdivision, with the clerk of such subdivision, his manual signature certified by him under oath, may execute or cause to be executed with a facsimile signature in lieu of his manual signature:

(a) any public security, provided that at least one signature required or permitted to be placed thereon shall be manually subscribed, but no such manual subscription shall be required as to interest coupons attached to such security; and

(b) any instrument of payment.

(3) Upon compliance with this section by the authorized officer, his facsimile signature has the same legal effect as his manual signature.

(4) When the seal of this state or any of its departments, agencies, public bodies, or other instrumentalities or of any of its political subdivisions is required in the execution of a public security or instrument of payment, the authorized officer may cause the seal to be printed, engraved, stamped, or otherwise placed in facsimile thereon. The facsimile seal has the same legal effect as the impression of the seal.

(5) Any person who with intent to defraud uses on a public security or an instrument of payment a facsimile signature or any reproduction of it of any authorized officer or any facsimile seal or any reproduction of it of this state or any of its departments, agencies, public bodies, or other instrumentalities or of any of its political subdivisions is guilty of a felony.

History: En. Secs. 1 thru 4, Ch. 260, L. 1959; R.C.M. 1947, 59-1301, 59-1302, 59-1303, 59-1304.

Cross-References

Facsimile signatures of legislators, 5-2-105.

School district trustees — application for issuance of warrants, 20-9-221.

"School district" to include community college districts, 20-15-403.

Felony — when no penalty specified, 46-18-213.

2-16-115. Signature of officer acting ex officio. When an officer discharges ex officio the duties of another office than that to which he is elected or appointed, his official signature and attestation, except as otherwise provided by law, must be in the name of the office the duties of which he discharges.

History: En. Sec. 1135, Pol. C. 1895; re-en. Sec. 437, Rev. C. 1907; re-en. Sec. 454, R.C.M. 1921; Cal. Pol. C. Sec. 1031; re-en. Sec. 454, R.C.M. 1935; R.C.M. 1947, 59-511.

2-16-116. Power to administer oaths. Every executive, state, and judicial officer may administer and certify oaths.

History: En. Sec. 1132, Pol. C. 1895; re-en. Sec. 434, Rev. C. 1907; re-en. Sec. 463, R.C.M. 1921; Cal. Pol. C. Sec. 1028; re-en. Sec. 463, R.C.M. 1935; R.C.M. 1947, 59-533.

Cross-References

Officers who may administer oaths, 1-6-101.

2-16-117. Office hours. (1) Unless otherwise provided by law, state executive branch offices must be open for the transaction of business continuously from 8 a.m. until 5 p.m. each day except on Saturdays, Sundays, and holidays. Each office must also be open at other times as the accommodation of the public or the proper transaction of business requires.

(2) The state treasurer may, in the interest of safekeeping funds, securities, and records, close the state treasurer's office from noon to 1 p.m. each day.

(3) The Montana historical society, established in 22-3-101, may be open for public visitation at hours other than those prescribed in this section, including hours during evenings and weekends.

History: **En. Sec. 1134, Pol. C. 1895; re-en. Sec. 436, Rev. C. 1907; re-en. Sec. 453, R.C.M. 1921; Cal. Pol. C. Sec. 1030; amd. Sec. 1, Ch. 5, L. 1931; re-en. Sec. 453, R.C.M. 1935; amd. Sec. 1, Ch. 22, L. 1951; amd. Sec. 1, Ch. 253, L. 1957; amd. Sec. 1, Ch. 2, L. 1961; R.C.M. 1947, 59-510(1)(part); amd. Sec. 1, Ch. 3, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 3 in (1), near middle of first sentence, substituted "state executive branch offices" for "every officer" and near end inserted "Sundays"; inserted (3) allowing the Montana Historical Society to be open at other than prescribed hours; and made minor changes in style.

Cross-References

Director of Department of Administration — ex officio State Treasurer, 2-15-1002.

Part 2
Accession to Office

2-16-201. Manner of election of certain officers. The mode of election of the governor, lieutenant governor, secretary of state, state auditor, attorney general, and superintendent of public instruction is prescribed by the constitution.

History: **En. Sec. 340, Pol. C. 1895; re-en. Sec. 128, Rev. C. 1907; re-en. Sec. 111, R.C.M. 1921; Cal. Pol. C. Sec. 348; re-en. Sec. 111, R.C.M. 1935; amd. Sec. 22, Ch. 100, L. 1973; R.C.M. 1947, 59-203.**

Cross-References

Election of officers, Art. VI, sec. 2, Mont. Const.

Elections, Title 13.

2-16-202. Title contested — salary withheld. (1) When the title of the incumbent of any office in this state is contested by proceedings instituted in any court for that purpose, no warrant can thereafter be drawn or paid for any part of his salary until such proceedings have been finally determined.

(2) As soon as such proceedings are instituted, the clerk of the court in which they are pending must certify the facts to the officers whose duty it would otherwise be to draw such warrant or pay such salary.

History: **En. Secs. 1040, 1041, Pol. C. 1895; re-en. Secs. 375, 376, Rev. C. 1907; re-en. Secs. 451, 452, R.C.M. 1921; Cal. Pol. C. Secs. 936, 937; re-en. Secs. 451, 452, R.C.M. 1935; R.C.M. 1947, 59-508, 59-509.**

2-16-203. Manner of appointments. Every officer, the mode of whose appointment is not prescribed by the constitution or statutes, must be appointed by the governor by and with the advice and consent of the senate.

History: **En. Sec. 990, Pol. C. 1895; re-en. Sec. 351, Rev. C. 1907; re-en. Sec. 419, R.C.M. 1921; Cal. Pol. C. Sec. 875; re-en. Sec. 419, R.C.M. 1935; R.C.M. 1947, 59-401.**

Cross-References

Appointment of department heads by Governor, Art. VI, sec. 8, Mont. Const.

Executive Branch appointments — generally, Title 2, ch. 15, part 1.

Appointments to subordinate positions by department heads, 2-15-112.

2-16-204. Gubernatorial commissions. (1) The governor must commission:

(a) All officers elected by the people whose commissions are not otherwise provided for;

(b) All officers of the militia;

(c) All officers appointed by the governor or by the governor with consent of the senate;

(d) United States senators.

(2) The commissions of all officers commissioned by the governor must be issued in the name of the state and must be signed by the governor and attested by the secretary of state under the great seal.

History: En. Secs. 1002, 1003, Pol. C. 1895; re-en. Secs. 358, 359, Rev. C. 1907; re-en. Secs. 426, 427, R.C.M. 1921; Cal. Pol. C. Secs. 891, 892; re-en. Secs. 426, 427, R.C.M. 1935; R.C.M. 1947, 59-409, 59-410.

Cross-References

Appointment of department heads — consent of Senate, Art. VI, sec. 8, Mont. Const.

Appointment of U.S. Senator, amend. 17, U.S. Const. (see anno. vol. 1, Federal Materials); 13-25-202.

Attestation by Secretary of State under great seal, 2-15-401.

Appointments by Governor, Title 5, ch. 5, part 3.

Appointment of officers of militia, 10-1-201.

2-16-205. Other commissions. The commissions of all other officers, where no special provision is made by law, must be signed by the presiding officer of the body or by the person making the appointment.

History: En. Sec. 1004, Pol. C. 1895; re-en. Sec. 360, Rev. C. 1907; re-en. Sec. 428, R.C.M. 1921; Cal. Pol. C. Sec. 893; re-en. Sec. 428, R.C.M. 1935; R.C.M. 1947, 59-411.

2-16-206 through 2-16-210 reserved.

2-16-211. Oaths — form — before whom — when. (1) Members of the legislature and all officers, executive, ministerial, or judicial, must, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support, protect, and defend the constitution of the United States and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)."

(2) No other oath, declaration, or test must be required as a qualification for any office or public trust.

(3) Except when otherwise provided, the oath may be taken before any officer authorized to administer oaths.

History: (1), (2)En. Sec. 3, p. 90, L. 1876; re-en. Sec. 575, 5th Div. Rev. Stat. 1879; re-en. Sec. 1067, 5th Div. Comp. Stat. 1887; amd. Sec. 1010, Pol. C. 1895; re-en. Sec. 362, Rev. C. 1907; re-en. Sec. 430, R.C.M. 1921; Cal. Pol. C. Sec. 904; re-en. Sec. 430, R.C.M. 1935; amd. Sec. 4, Ch. 7, L. 1973; amd. Sec. 23, Ch. 100, L. 1973; Sec. 59-413, R.C.M. 1947; (3)En. Sec. 1013, Pol. C. 1895; re-en. Sec. 365, Rev. C. 1907; re-en. Sec. 433, R.C.M. 1921; Cal. Pol. C. Sec. 908; re-en. Sec. 433, R.C.M. 1935; Sec. 59-416, R.C.M. 1947; R.C.M. 1947, 59-413, 59-416.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.

Who may administer oaths, 1-6-101, 2-16-116.

Vacancy in office created — failure to file official oath within time prescribed, 2-16-501.

2-16-212. Filing. (1) Whenever a different time is not prescribed by law, the oath of office must be taken, subscribed, and filed within 30 days after the officer has notice of his election or appointment or before the expiration of 15 days from the commencement of his term of office when no such notice has been given.

(2) Every oath of office, certified by the officer before whom the same was taken, must be filed within the time required by law, except when otherwise specially provided, as follows:

(a) the oath of all officers whose authority is not limited to any particular county, in the office of the secretary of state;

(b) the oath of all officers, elected or appointed for any county and of all officers whose duties are local or whose residence in any particular county is prescribed by law and of the clerks of the district courts, in the offices of the clerks of the respective counties.

History: (1)En. Sec. 1, Ch. 1, L. 1907; Sec. 364, Rev. C. 1907; re-en. Sec. 432, R.C.M. 1921; Cal. Pol. C. Sec. 907; re-en. Sec. 432, R.C.M. 1935; Sec. 59-415, R.C.M. 1947; (2)En. Sec. 1014, Pol. C. 1895; re-en. Sec. 366, Rev. C. 1907; re-en. Sec. 434, R.C.M. 1921; Cal. Pol. C. Sec. 909; re-en. Sec. 434, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1949; Sec. 59-417, R.C.M. 1947; R.C.M. 1947, 59-415, 59-417(1), (2).

2-16-213. Term of office — holdover — assumption of office. (1) Every office of which the duration is not fixed by law is held at the pleasure of the appointing power.

(2) Every officer must continue to discharge the duties of his office, although his term has expired, until his successor has qualified.

(3) Notwithstanding subsection (2), an appointee who is by law subject to confirmation by the senate may, upon expiration of or vacancy in the previous term, assume the office to which appointed and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate rejects the appointment, the office becomes vacant.

History: En. Secs. 993, 994, Pol. C. 1895; re-en. Secs. 354, 355, Rev. C. 1907; re-en. Secs. 422, 423, R.C.M. 1921; Cal. Pol. C. Secs. 878, 879; re-en. Secs. 422, 423, R.C.M. 1935; R.C.M. 1947, 59-405, 59-406; amd. Sec. 2, Ch. 83, L. 1983.

Cross-References

Appointments by Governor, Title 5, ch. 5, part 3.

Part 3
Deputies

2-16-301. Appointment of deputies and subordinate officers — number. (1) All assistants, deputies, and other subordinate officers whose appointments are not otherwise provided for must be appointed by the officer or body to whom they are respectively subordinate.

(2) When the number of such deputies or subordinate officers is not fixed by law, it is limited only by the discretion of the appointing power.

(3) The appointment of deputies not otherwise provided for must be made in writing filed in the office of the appointing power or the office of its clerk.

History: (1)En. Sec. 991, Pol. C. 1895; re-en. Sec. 352, Rev. C. 1907; re-en. Sec. 420, R.C.M. 1921; Cal. Pol. C. Sec. 876; re-en. Sec. 420, R.C.M. 1935; Sec. 59-402, R.C.M. 1947; (2)En. Sec. 992, Pol. C. 1895; re-en. Sec. 353, Rev. C. 1907; re-en. Sec. 421, R.C.M. 1921; Cal. Pol. C. Sec. 877; re-en. Sec. 421, R.C.M. 1935; Sec. 59-403, R.C.M. 1947; (3)En. Sec. 1005, Pol. C. 1895; re-en. Sec. 361, Rev. C. 1907; re-en. Sec. 429, R.C.M. 1921; Cal. Pol. C. Sec. 894; re-en. Sec. 429, R.C.M. 1935; Sec. 59-412, R.C.M. 1947; R.C.M. 1947, 59-402, 59-403, 59-412; amd. Sec. 1, Ch. 21, L. 1983.

Cross-References

Appointment of deputies for county officers, 7-4-2401.

2-16-302. Oath of deputies. Deputies must within 10 days after receiving notice of their appointment take and file an oath in the manner required of their principals.

History: En. Sec. 1015, Pol. C. 1895; re-en. Sec. 367, Rev. C. 1907; re-en. Sec. 435, R.C.M. 1921; Cal. Pol. C. Sec. 910; re-en. Sec. 435, R.C.M. 1935; R.C.M. 1947, 59-418; amd. Sec. 2, Ch. 21, L. 1983.

Cross-References

Oaths required of public officers, Art. III, sec. 3, Mont. Const.; 2-16-211; 2-16-212.

2-16-303. Powers. In all cases not otherwise provided for, each deputy possesses the powers and may perform the duties attached by law to the office of his principal.

History: En. Sec. 980, Pol. C. 1895; re-en. Sec. 350, Rev. C. 1907; re-en. Sec. 418, R.C.M. 1921; Cal. Pol. C. Sec. 865; re-en. Sec. 418, R.C.M. 1935; R.C.M. 1947, 59-404.

Part 4
Salaries

2-16-401. Repealed. Sec. 3, Ch. 236, L. 1985.

History: (1) thru (3)En. Sec. 1, Ch. 66, L. 1973; amd. Sec. 1, Ch. 41, L. 1974; Sec. 59-1401, R.C.M. 1947; (4) thru (8)Ap. p. Sec. 2, Ch. 66, L. 1973; amd. Sec. 2, Ch. 41, L. 1974; amd. Sec. 8, Ch. 453, L. 1977; Sec. 59-1402, R.C.M. 1947; Ap. p. Sec. 4, Ch. 66, L. 1973; amd. Sec. 3, Ch. 41, L. 1974; Sec. 59-1404, R.C.M. 1947; R.C.M. 1947, 59-1401, 59-1402, 59-1404(part); amd. Sec. 25, Ch. 184, L. 1979.

2-16-402. Repealed. Sec. 3, Ch. 236, L. 1985.

History: (1)En. Sec. 3, Ch. 66, L. 1973; Sec. 59-1403, R.C.M. 1947; (2)En. Sec. 4, Ch. 66, L. 1973; amd. Sec. 3, Ch. 41, L. 1974; Sec. 59-1404, R.C.M. 1947; R.C.M. 1947, 59-1403, 59-1404(part).

2-16-403. Salaries of supreme court justices. (1) Subject to subsection (3), the salary of the chief justice of the supreme court is as follows:

(a) $67,595 beginning July 1, 1995;

(b) $70,231 beginning January 1, 1996.

(2) Subject to subsection (3), the salary of a justice of the supreme court is as follows:

(a) $66,289 beginning July 1, 1995;

(b) $68,874 beginning January 1, 1996.

(3) Prior to June 30, 1996, and prior to June 30 of each even-numbered year thereafter, the department of administration shall conduct a salary survey of justices and chief justices of the highest appellate courts similar to the Montana supreme court for the states of North Dakota, South Dakota, Wyoming, and Idaho. The department shall include the salary for a Montana supreme court justice or the chief justice in determining the average salary for a justice and the average salary for the chief justice. If the average salaries are greater than the salaries for a supreme court justice or the chief justice in Montana, then beginning July 1, 1997, the average salaries are the new salaries for a supreme court justice or the chief justice. In each year following the year in which a survey is conducted, the average salary is the new salary for the position. A justice's salary or the chief justice's salary may not be reduced.

History: En. Sec. 16, Ch. 455, L. 1995.

Cross-References

Salaries of District Court Judges, 3-5-211.

2-16-404. Repealed. Sec. 21, Ch. 455, L. 1995.

History: En. Sec. 1, Ch. 462, L. 1989; amd. Sec. 1, Ch. 656, L. 1991.

2-16-405. Salaries of certain elected state officials. (1) Subject to subsection (2), the salaries paid to certain elected officials of the state of Montana are:

(a) Governor, $59,310.
(b) Lieutenant governor, $43,242.
(c) Attorney general, $54,329.
(d) State auditor, $40,101.
(e) Superintendent of public instruction, $47,208.
(f) Public service commission presiding officer, $44,615.
(g) Public service commissioners, other than presiding officer, $43,242.
(h) Secretary of state, $40,101.
(i) Clerk of the supreme court, $39,044.

(2) Before June 30 of each even-numbered year, the department of administration shall conduct a salary survey of executive branch officials with similar titles to the Montana officials listed in subsection (1) for the states of North Dakota, South Dakota, Wyoming, and Idaho. The department shall include the salary for the Montana official in determining the average salary for the officials with similar titles. If the average salary is greater than the salary for the official in Montana, then beginning July 1, in each year following the year in which a survey is conducted, the average salary is the new salary for the official.

History: En. Sec. 1, Ch. 202, L. 1959; amd. Sec. 2, Ch. 187, L. 1961; amd. Sec. 1, Ch. 212, L. 1963; amd. Sec. 1, Ch. 308, L. 1967; amd. Sec. 1, Ch. 323, L. 1969; amd. Sec. 1, Ch. 314, L. 1971; amd. Sec. 4, Ch. 297, L. 1973; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 1, Ch. 377, L. 1974; amd. Sec. 2, Ch. 461, L. 1977; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 25-501; amd. Sec. 1, Ch. 650, L. 1979; amd. Sec. 1, Ch. 605, L. 1981; amd. Sec. 1, Ch. 656, L. 1983; amd. Sec. 1, Ch. 693, L. 1985; amd. Sec. 2, Ch. 462, L. 1989; amd. Sec. 1, Ch. 660, L. 1989; amd. Sec. 12, Ch. 720, L. 1991; amd. Sec. 1, Ch. 455, L. 1995; amd. Sec. 2, Ch. 417, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 417 in (1) deleted pre-1996 pay schedules for all officers (see 1995 Session Law for text); in (2), in first sentence, substituted "officials with similar titles to" for "officials similar to", at end of second sentence substituted "officials with similar titles" for "similar position", in third sentence substituted "official in Montana" for "similar position in Montana" and after "July 1" deleted "1997, the average is the new salary for that position", and at end of fourth sentence substituted "official" for "position"; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Salaries of District Court Judges, 3-5-211.

2-16-406. Salary for all services — how paid. (1) The salary of each such officer shall be for all services required of him or which may hereafter devolve upon him by law, including all services rendered ex officio as a member of any board, commission, or committee, but shall not include actual necessary travel, lodging, and subsistence expenses incidental to his official duties.

(2) Unless otherwise provided by law, the salaries of officers must be paid out of the general fund in the state treasury monthly on the last day of the month.

History: (1)En. Sec. 2, Ch. 202, L. 1959; amd. Sec. 2, Ch. 187, L. 1961; Sec. 25-501.1, R.C.M. 1947; (2)En. Sec. 1133, Pol. C. 1895; amd. Sec. 1, p. 114, L. 1901; re-en. Sec. 435, Rev. C. 1907; amd. Sec. 1, Ch. 107, L. 1917; re-en. Sec. 442, R.C.M. 1921; re-en. Sec. 442, R.C.M. 1935; Sec. 25-507, R.C.M. 1947; R.C.M. 1947, 25-501.1(part), 25-507.

Cross-References

Salary to be withheld — contested title to office, 2-16-202.

Travel, lodging, and subsistence expenses, 2-18-501 through 2-18-503.

Supreme Court Justices' salaries, 3-2-104.

Part 5
Vacancy and Succession

2-16-501. Vacancies created. An office becomes vacant on the happening of any one of the following events before the expiration of the term of the incumbent:

(1) the death of the incumbent;

(2) a determination pursuant to Title 53, chapter 21, part 1, that the incumbent suffers from a mental disorder and is in need of commitment;

(3) resignation of the incumbent;

(4) removal of the incumbent from office;

(5) the incumbent's ceasing to be a resident of the state or, if the office is local, of the district, city, county, town, or township for which the incumbent was chosen or appointed or within which the duties of the incumbent's office are required to be discharged;

(6) absence of the incumbent from the state, without the permission of the legislature, beyond the period allowed by law;

(7) the incumbent's ceasing to discharge the duty of the incumbent's office for the period of 3 consecutive months, except when prevented by sickness or when absent from the state by permission of the legislature;

(8) conviction of the incumbent of a felony or of an offense involving moral turpitude or a violation of the incumbent's official duties;

(9) the incumbent's refusal or neglect to file the incumbent's official oath or bond within the time prescribed;

(10) the decision of a competent tribunal declaring void the incumbent's election or appointment.

History: En. Sec. 42, p. 385, Bannack Stat.; re-en. Sec. 42, p. 468, Cod. Stat. 1871; amd. Sec. 554, 5th Div. Rev. Stat. 1879; re-en. Sec. 1046, 5th Div. Comp Stat. 1887; amd. Sec. 1101, Pol. C. 1895; re-en. Sec. 420, Rev. C. 1907; re-en. Sec. 511, R.C.M. 1921; Cal. Pol. C. Sec. 996; re-en. Sec. 511, R.C.M. 1935; R.C.M. 1947, 59-602; amd. Sec. 26, Ch. 184, L. 1979; amd. Sec. 1, Ch. 490, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 490 in (2), at end, substituted "the incumbent suffers from a mental disorder and is in need of commitment" for "he is seriously mentally ill"; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.; 2-16-211; 2-16-212.

Removal from office — impeachment, Art. V, sec. 13, Mont. Const.; Title 5, ch. 5, part 4.

Vacancy in office of elected state officers, Art. VI, sec. 6, Mont. Const.

Bond filing, Title 2, ch. 9, part 5.

Residence of officers, 2-16-111.

Absence from state, 2-16-112.

Notice of vacancy causing occurrence to be given by appropriate official, 2-16-503.

Inability to perform, 2-16-504.

Removal from office — recall, Title 2, ch. 16, part 6.

Vacancies in Legislature, Title 5, ch. 2, part 4.

Vacancies in Board of County Commissioners, 7-4-2106.

Exemption for absence from state for military service, 10-2-228.

Bribery — disqualification from officeholding, 45-7-101.

Official misconduct — suspension and forfeiture of office, 45-7-401.

2-16-502. Resignations. (1) Resignations must be in writing and made as follows:

(a) by the governor and lieutenant governor, to the legislature if it is in session and, if not, then to the secretary of state;

(b) by all officers commissioned by the governor, to the governor;

(c) by senators and members of the house of representatives, if the legislature is not in session, to the secretary of state and, if it is in session, to the presiding officer of the branch to which the member belongs, who must immediately transmit the same to the secretary of state;

(d) by all county and township officers not commissioned by the governor, to the clerk of the board of commissioners of their respective counties;

(e) by all other appointed officers, to the body or officer that appointed them;

(f) by all trustees of school districts, to the clerk of the respective school district, provided for in 20-3-325;

(g) in all cases not otherwise provided for, by filing the resignation in the office of the secretary of state.

(2) A resignation is effective 72 hours after its submission in the manner provided for in subsection (1) unless the resignation is withdrawn during that 72-hour period by the resigner through written notification of withdrawal made in the same manner as provided in subsection (1) for resignations.

History: En. Sec. 41, p. 468, Cod. Stat. 1871; re-en. Sec. 553, 5th Div. Rev. Stat. 1879; re-en. Sec. 1045, 5th Div. Comp. Stat. 1887; amd. Sec. 1100, Pol. C. 1895; re-en. Sec. 419, Rev. C. 1907; amd. Sec. 1, Ch. 8, L. 1921; re-en. Sec. 510, R.C.M. 1921; Cal. Pol. C. Sec. 995; re-en. Sec. 510, R.C.M. 1935; R.C.M. 1947, 59-601; amd. Sec. 1, Ch. 68, L. 1981; amd. Sec. 1, Ch. 64, L. 1993.

2-16-503. Notice of removal. Whenever an officer is removed, committed pursuant to 53-21-127, or convicted of a felony or offense involving moral turpitude or a violation of the officer's official duty or whenever the officer's election or appointment is declared void, the body, judge, or officer before whom the proceedings were conducted shall give notice of the proceedings to the officer authorized to fill the vacancy.

History: En. Sec. 1102, Pol. C. 1895; re-en. Sec. 421, Rev. C. 1907; re-en. Sec. 512, R.C.M. 1921; Cal. Pol. C. Sec. 997; re-en. Sec. 512, R.C.M. 1935; R.C.M. 1947, 59-603; amd. Sec. 27, Ch. 184, L. 1979; amd. Sec. 2, Ch. 490, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 490 near beginning, after "removed", substituted "committed pursuant to 53-21-127" for "declared seriously mentally ill"; and made minor changes in style. Amendment effective July 1, 1997.

2-16-504. Elective officers' inability to perform — filling vacancy — notice. (1) When an incumbent in the office of lieutenant governor, secretary of state, attorney general, auditor, or superintendent of public instruction is found to be permanently unable to perform the functions of his position, a vacancy exists.

(2) When a written declaration, made as hereinafter provided, is transmitted to the legislature that any such officer is unable to discharge the powers and duties of this office, the legislature may convene in the manner provided for the convening of special sessions to determine whether such disability exists or it may defer such determination to the next regular session of the legislature.

(3) If the legislature within 21 days after convening, whether in regular or special session, determines by two-thirds vote of its members that such officer is unable to discharge the powers and duties of his office, this office shall be declared to be vacant and shall be filled as provided by the constitution of Montana or laws enacted pursuant thereto.

(4) The written declaration required hereunder shall be made and transmitted by the lieutenant governor and attorney general unless one of them is the officer whose disability is in question. If the lieutenant governor is the subject of the declaration, the declaration shall be made by the governor and attorney general; if the attorney general is the subject of the declaration, the declaration shall be made by the governor and secretary of state.

History: En. Sec. 1, Ch. 343, L. 1973; R.C.M. 1947, 59-609.

Cross-References

Special sessions, Art. V, sec. 6, Mont. Const.; Title 5, ch. 3.

Vacancy in office of elected state officers, Art. VI, sec. 6, Mont. Const.

2-16-505. Filling vacancies in certain elective offices. A vacancy in the office of either the secretary of state, state auditor, attorney general, clerk of the supreme court, or superintendent of public instruction must be filled by a person appointed by the governor, who holds his office until the first Monday in January next after a general election. At such election the office must be filled by election for the unexpired term.

History: En. Sec. 1106, Pol. C. 1895; re-en. Sec. 425, Rev. C. 1907; re-en. Sec. 516, R.C.M. 1921; Cal. Pol. C. Sec. 1001; re-en. Sec. 516, R.C.M. 1935; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 59-607.

Cross-References

Time for holding general elections, 13-1-104.

2-16-506. Filling vacancies — recess appointments. (1) When any office becomes vacant and no mode is provided by law for filling the vacancy, the governor shall fill the vacancy by appointing a qualified person to fill the unexpired term of the person whose office became vacant.

(2) If the legislature or one house of the legislature must confirm an appointment of a person appointed by the governor to fill a vacancy, the governor may appoint the person to assume office before the legislature meets in its next regular session to consider the appointment. A person so appointed is vested with all the functions of the office upon assuming the office and is a de jure officer, notwithstanding the fact that the legislature has not yet confirmed the appointment. If the legislature does not confirm the appointment, the governor shall make a new appointment to fill the unexpired term.

History: En. Sec. 1104, Pol. C. 1895; re-en. Sec. 423, Rev. C. 1907; re-en. Sec. 514, R.C.M. 1921; Cal. Pol. C. Sec. 999; re-en. Sec. 514, R.C.M. 1935; amd. Sec. 1, Ch. 388, L. 1973; R.C.M. 1947, 59-605.

Cross-References

Appointment of department heads by Governor, Art. VI, sec. 8, Mont. Const.

De jure (lawful) officer — notwithstanding lack of confirmation, 2-15-111.

Appointments by Governor, Title 5, ch. 5, part 3.

2-16-507. Powers and duties of officer filling unexpired term. Any person elected or appointed to fill a vacancy, after filing his official oath and bond, possesses all the rights and powers and is subject to all the liabilities, duties, and obligations as if he had been elected to the office for a full term.

History: En. Sec. 1107, Pol. C. 1895; re-en. Sec. 426, Rev. C. 1907; re-en. Sec. 517, R.C.M. 1921; Cal. Pol. C. Sec. 1004; re-en. Sec. 517, R.C.M. 1935; R.C.M. 1947, 59-608.

2-16-508 through 2-16-510 reserved.

2-16-511. Vacancy in office of governor and lieutenant governor. (1) If the offices of both the governor and the lieutenant governor become vacant, the president of the senate shall become governor and shall appoint a lieutenant governor.

(2) If the president of the senate is unable to assume the office of governor, the speaker of the house shall become governor and a lieutenant governor shall be elected in accordance with the provision of 2-16-512.

History: En. Sec. 1, Ch. 29, L. 1973; R.C.M. 1947, 82-1304.1.

Cross-References

Vacancy in office of Governor and Lieutenant Governor, Art. VI, sec. 6, Mont. Const.

2-16-512. Election by legislature if president of senate and speaker unable to assume office of governor. (1) If neither the president of the senate nor the speaker of the house of representatives is able to assume the office of governor, the legislature, meeting in joint session, shall elect a governor and a lieutenant governor.

(2) When the speaker of the house becomes governor, the legislature will meet in joint session and shall elect a lieutenant governor.

History: En. Sec. 2, Ch. 29, L. 1973; R.C.M. 1947, 82-1304.2.

2-16-513. Succession in case of termination or incapacitation of primary successors. (1) If, because of an enemy attack upon the United States, the governor, lieutenant governor, president pro tempore of the senate, and speaker of the house are killed or rendered unable to serve as governor, the senior member of the legislature shall act as governor.

(2) He shall call an emergency session of the legislature at a safe location within the state. The legislature meeting in joint session shall elect a governor.

(3) For the purposes of this section, the member with seniority is the member who has served in the legislature for the longest continuous period of time up to and including his current term. If two or more members of the legislature have equal seniority, the line of succession among them is from eldest to youngest in age.

History: En. Sec. 1, Ch. 148, L. 1959; R.C.M. 1947, 82-1309; amd. Sec. 28, Ch. 184, L. 1979.

Cross-References

Continuity in government following enemy attack, Title 10, ch. 3, part 6.

2-16-514. Successor to serve until next general election. The successor to the governor and the lieutenant governor shall serve until the next general election and shall have all the powers, duties, and emoluments of the respective offices.

History: En. Sec. 3, Ch. 29, L. 1973; R.C.M. 1947, 82-1304.3.

Cross-References

Disaster and emergency services, Title 10, ch. 3.

Emergency powers of Governor relating to disaster or attack, 10-3-104, 10-3-302, 10-3-305, 10-3-503, 10-3-607.

Time for holding general elections, 13-1-104.

2-16-515. Governor and lieutenant governor incapacitated. (1) If both the governor and lieutenant governor are unable to serve as governor, the president of the senate shall become acting governor until the governor or lieutenant governor is able to resume the duties of the office.

(2) If the president of the senate is unable to become acting governor, the speaker of the house of representatives shall become acting governor.

History: En. Sec. 4, Ch. 29, L. 1973; R.C.M. 1947, 82-1304.4.

2-16-516 through 2-16-520 reserved.

2-16-521. Powers of acting governor. (1) Every provision of the laws of this state in relation to the powers and duties of the governor and in relation to acts and duties to be performed by others toward him extends to the persons performing for the time being the duties of governor.

(2) An acting governor shall have all the rights, duties, and emoluments of the office of governor while he is so acting.

History: (1)En. Sec. 373, Pol. C. 1895; re-en. Sec. 148, Rev. C. 1907; re-en. Sec. 127, R.C.M. 1921; Cal. Pol. C. Sec. 383; re-en. Sec. 127, R.C.M. 1935; Sec. 82-1304, R.C.M. 1947; (2)En. Sec. 5, Ch. 29, L. 1973; Sec. 82-1304.5, R.C.M. 1947; R.C.M. 1947, 82-1304, 82-1304.5.

Part 6

Montana Recall Act

2-16-601. Short title. This part shall be cited as the "Montana Recall Act".

History: En. Sec. 1, I.M. No. 73, approved November 2, 1976; amd. Sec. 2, Ch. 364, L. 1977; R.C.M. 1947, 59-610.

2-16-602. Definitions. As used in this part, the following definitions apply:

(1) "Political subdivision" means a local government unit including but not limited to a county, city, or town established under authority of Article XI, section 1, of The Constitution of the State of Montana or a school district.

(2) "Public office" means a position of duty, trust, or authority created by the constitution or by the legislature or by a political subdivision through authority conferred by the constitution or the legislature that meets the following criteria:

(a) the position must possess a delegation of a portion of the sovereign power of government to be exercised for the benefit of the public;

(b) the powers conferred and the duties to be discharged must be defined, directly or impliedly, by the constitution, the legislature, or by a political subdivision through legislative authority;

(c) the duties must be performed independently and without control of a superior power other than the law, unless the legislature has created the position and placed it under the general control of a superior office or body; and

(d) the position must have some permanency and continuity and not be only temporary or occasional.

(3) "State-district" means a public service commission district, a legislative representative or senatorial district, or a judicial district.

History: En. 59-611 by Sec. 1, Ch. 364, L. 1977; R.C.M. 1947, 59-611.

Cross-References

Judicial districts, 3-5-101.

Legislative representative or senatorial districts — filed with Secretary of State, 5-1-111.

"School district" to include community college districts, 20-15-403.

Public Service Commission districts, 69-1-104.

2-16-603. Officers subject to recall — grounds for recall. (1) Every person holding a public office of the state or any of its political subdivisions, either by election or appointment, is subject to recall from such office.

(2) A public officer holding an elective office may be recalled by the qualified electors entitled to vote for his successor. A public officer holding an appointive office may be recalled by the qualified electors entitled to vote for the successor or successors of the elective officer or officers who have the authority to appoint a person to that position.

(3) Physical or mental lack of fitness, incompetence, violation of his oath of office, official misconduct, or conviction of a felony offense enumerated in Title 45 is the only basis for recall. No person may be recalled for performing a mandatory duty of the office he holds or for not performing any act that, if performed, would subject him to prosecution for official misconduct.

History: En. Sec. 2, I.M. No. 73, approved November 2, 1976; amd. Sec. 3, Ch. 364, L. 1977; R.C.M. 1947, 59-612; amd. Sec. 1, Ch. 398, L. 1979.

2-16-604 through 2-16-610 reserved.

2-16-611. Method of removal cumulative. The recall is cumulative and additional to, rather than a substitute for, other methods for removal of public officers.

History: En. Sec. 3, I.M. No. 73, approved November 2, 1976; R.C.M. 1947, 69-613.

Cross-References

Impeachment, Art. V, sec. 13, Mont. Const.; Title 5, ch. 5, part 4.

Other methods for removal of public officers, 2-16-501.

Official misconduct — forfeiture of office, 45-7-401.

2-16-612. Persons qualified to petition — penalty for false signatures. (1) Every person who is a qualified elector of this state may sign a petition for recall of a state officer.

(2) Every person who is a qualified elector of a district of the state from which a state-district officer is elected may sign a petition for recall of a state-district officer of that district or appointed by an officer or the officers of that election district.

(3) Every person who is a qualified elector of a political subdivision of this state may sign a petition for recall of an officer of that political subdivision. However, if a political subdivision is divided into election districts, a person must be a qualified elector in the election district to be eligible to sign a petition to recall an officer elected from that election district.

(4) Any person signing any name other than his own to any petition or knowingly signing his name more than once for the recall or who is not at the time of the signing a qualified elector or any person who knowingly makes a false entry upon an affidavit required in connection with the filing of a petition for the recall of an officer is guilty of unsworn falsification or tampering with public records or information, as appropriate, and is punishable as provided in 45-7-203 or 45-7-208, as applicable.

History: En. Sec. 10, I.M. No. 73, approved November 2, 1976; amd. Sec. 7, Ch. 364, L. 1977; R.C.M. 1947, 59-620.

Cross-References

Qualified elector defined, Art. IV, sec. 2, Mont. Const.

Qualifications of voter, 13-1-111.

2-16-613. Limitations on recall petitions. (1) A recall petition may not name more than one officer to be recalled.

(2) No recall petition against an officer may be approved for circulation, as required in 2-16-617(3), until he has held office for 2 months.

(3) No recall petition may be filed against an officer for whom a recall election has been held for a period of 2 years during his term of office unless the state or political subdivision or subdivisions financing such recall election is first reimbursed for all expenses of the preceding recall election.

History: (1)En. Sec. 4, I.M. No. 73, approved November 2, 1976; amd. Sec. 4, Ch. 364, L. 1977; Sec. 59-614, R.C.M. 1947; (2), (3)En. Sec. 5, I.M. No. 73, approved November 2, 1976; Sec. 59-615, R.C.M. 1947; R.C.M. 1947, 59-614(part), 59-615; amd. Sec. 1, Ch. 159, L. 1983.

2-16-614. Number of electors required for recall petition. Recall petitions for elected or appointed state officers shall contain the signatures of qualified electors equaling at least 10% of the number of persons registered to vote at the preceding state general election. A petition for the recall of a state-district officer must contain the signatures of qualified electors equaling at least 15% of the number of persons registered to vote in the last preceding election in that district. Recall petitions for elected or appointed county officers shall contain the signatures of qualified electors equaling at least 15% of the number of persons registered to vote at the preceding county general election. Recall petitions for elected or appointed officers of municipalities or school districts shall contain the signatures of qualified electors equaling at least 20% of the number of persons registered to vote at the preceding election for the municipality or school district.

History: En. Sec. 4, I.M. No. 73, approved November 2, 1976; amd. Sec. 4, Ch. 364, L. 1977; R.C.M. 1947, 59-614(part); amd. Sec. 1, Ch. 308, L. 1979.

Cross-References

Register of electors to be kept, 13-2-112.

2-16-615. Filing of recall petitions — mandamus for refusal. (1) Recall petitions for elected officers shall be filed with the official who is provided by law to accept the declaration of nomination or petition for nomination for such office. Recall petitions for appointed state officers shall be filed with the secretary of state and for appointed county or municipal officers shall be filed with the county election administrator. Recall petitions for appointed officers from other political subdivisions shall be filed with the county election administrator if the boundaries of the political subdivisions lie wholly within one county or otherwise with the secretary of state.

(2) If the secretary of state, county election administrator or other filing official refuses to accept and file any petition for recall with the proper number of signatures of qualified electors, any elector may within 10 days after such refusal apply to the district court for a writ of mandamus. If it is determined that the petition is sufficient, the district court shall order the petition to be filed with a certified copy of the writ attached thereto, as of the date when it

was originally offered for filing. On a showing that any filed petition is not sufficient, the court may enjoin certification, printing, or recall election.

(3) All such suits or appeals therefrom shall be advanced on the court docket and heard and decided by the court as expeditiously as possible.

(4) Any aggrieved party may file an appeal within 10 days after any adverse order or decision as provided by law.

History: En. Secs. 6, 12, I.M. No. 73, approved November 2, 1976; R.C.M. 1947, 59-616, 59-623; amd. Sec. 375, Ch. 571, L. 1979.

Cross-References

Declarations for nominations — whom to file with, 13-10-201.

Appeals from judgments of District Court, Rules 4 through 16, M.R.App.P. (see Title 25, ch. 21).

Injunctions, Title 27, ch. 19.

Mandamus, Title 27, ch. 26.

2-16-616. Form of recall petition. (1) The form of the recall petition shall be substantially as follows:

WARNING

A person who knowingly signs a name other than his own to this petition or who signs his name more than once upon a petition to recall the same officer at one election or who is not, at the time he signs this petition, a qualified elector of the state of Montana entitled to vote for the successor of the elected officer to be recalled or the successor or successors of the officer or officers who have the authority to appoint a person to the position held by the appointed officer to be recalled is punishable by a fine of no more than $500 or imprisonment in the county jail for a term not to exceed 6 months, or both, or imprisonment in the state prison for a term not to exceed 10 years, or both.

RECALL PETITION

To the Honorable ...., Secretary of State of the State of Montana (or name and office of other filing officer): We, the undersigned qualified electors of the State of Montana (or name of appropriate state-district or political subdivision) respectfully petition that an election be held as provided by law on the question of whether ...., holding the office of ...., should be recalled for the following reasons: (Setting out a general statement of the reasons for recall in not more than 200 words). By his signature each signer certifies: I have personally signed this petition; I am a qualified elector of the state of Montana and (name of appropriate political subdivision); and my residence and post-office address are correctly written after my name to the best of my knowledge and belief.

(2) Numbered lines shall follow the above heading. Each numbered line shall contain spaces for the signature, post-office address, and printed last name of the signer. Each separate sheet of the petition shall contain the heading and reasons for the proposed recall as prescribed above.

History: En. Sec. 7, I.M. No. 73, approved November 2, 1976; amd. Sec. 5, Ch. 364, L. 1977; R.C.M. 1947, 59-617.

2-16-617. Form of circulation sheets. (1) The signatures on each petition shall be placed on sheets of paper known as circulation sheets. Each circulation sheet shall be substantially 8 1/2 x 14 inches or a continuous sheet may be folded so as to meet this size limitation. Such circulation sheets shall be ruled with a horizontal line 1 1/2 inches from the top thereof. The space above such line shall remain blank and shall be for the purpose of binding.

(2) The petition, for purposes of circulation, may be divided into sections, each section to contain not more than 25 circulation sheets.

(3) Before a petition may be circulated for signatures, a sample circulation sheet must be submitted to the officer with whom the petition must be filed in the form in which it will be circulated. The filing officer shall review the petition for sufficiency as to form and approve or reject the form of the petition, stating his reasons therefor, within 1 week of receiving the sheet.

(4) The petition form submitted must be accompanied by a written statement containing the reasons for the desired recall as stated on the petition. The truth of purported facts contained in the statement shall be sworn to by at least one of the petitioners before a person authorized to administer oaths.

(5) The filing officer shall serially number all approved petitions continuously from year to year.

History: En. Sec. 8, I.M. No. 73, approved November 2, 1976; amd. Sec. 6, Ch. 364, L. 1977; R.C.M. 1947, 59-618.

Cross-References

Filing officer, 2-16-615.

2-16-618. Forms not mandatory. The forms prescribed in this part are not mandatory, and if substantially followed, the petition shall be sufficient, notwithstanding clerical and merely technical errors.

History: En. Sec. 9, I.M. No. 73, approved November 2, 1976; R.C.M. 1947, 59-619.

Cross-References

Substance preferred over form, 1-3-219.

2-16-619. Submission of circulation sheets — certification of signatures. (1) Signed circulation sheets or sections of a petition for recall must be submitted to the officer responsible for registration of electors in the county in which the signatures were obtained within 3 months of the date the form of the petition was approved under 2-16-617.

(2) An affidavit, in substantially the following form, shall be attached to each circulation sheet or section submitted to the county officer:

(Name of person circulating petition), being first sworn, deposes and says: I circulated or assisted in circulating the petition to which this affidavit is attached, and I believe the signatures thereon are genuine, are the signatures of the persons whose names they purport to be, and that the signers knew the contents of the petition before signing the same.

.... (Signature)

Subscribed and sworn before me this .... day of ......, 19...

.... (Person authorized to take oaths)

Seal .... (Title or notarial information)

History: En. 59-621 by Sec. 8, Ch. 364, L. 1977; R.C.M. 1947, 59-621.

Cross-References

Election Administrator responsible for elector registration lists, 13-1-301.

2-16-620. County clerk to verify signatures. (1) The county clerk in each county in which such a petition is signed shall verify and compare the signatures of each person who has signed the petition to assure that he is an elector in such county and, if satisfied the signatures are genuine, certify that fact to the officer with whom the recall petition is to be filed, in substantially the following form:

To the Honorable ...., Secretary of State of the State of Montana (or name and title of other officer):

I, ..., ... (title) of .... County certify that I have compared the signatures on ...... sheets (specifying number of sheets) of the petition for recall No. ...... attached, in the manner prescribed by law, and I believe ...... (number) signatures are valid for the purpose of the petition. I further certify that the affidavit of the circulator of the (sheet) (section) of the petition is attached and that the post-office address is completed for each valid signature.

Signed: .... (Date) .... (Signature)
Seal .... (Title)

(2) Such certificate is prima facie evidence of the facts stated therein, and the secretary of state or other officer receiving the recall petition may consider and count only such signatures as are certified. However, the officer with whom the recall petition is filed shall consider and count any remaining signatures of the registered voters which prove to be genuine, and such signatures shall be considered and counted if they are attested to in the manner and form as provided for initiative and referendum petitions.

(3) The county clerk may not retain any portion of a petition for more than 30 days following the receipt of that portion. At the expiration of such period the county clerk shall certify the valid signatures on that portion of the petition and deliver the same to the person with whom the petition is required to be filed.

History: En. Sec. 11, I.M. No. 73, approved November 2, 1976; amd. Sec. 9, Ch. 364, L. 1977; R.C.M. 1947, 59-622; amd. Sec. 2, Ch. 159, L. 1983.

Cross-References

Filing of recall petitions, 2-16-615.

Register of electors to be kept, 13-2-112.

Initiative and referendum petitions, 13-27-204, 13-27-205.

2-16-621. Notification to officer — statement of justification. Upon filing the petition or a portion of the petition containing the number of valid signatures required under 2-16-614, the official with whom it is filed shall immediately give written notice to the officer named in the petition. The notice shall state that a recall petition has been filed, shall set forth the reasons contained therein, and shall notify the officer named in the recall petition that he has the right to prepare and have printed on the ballot a statement containing not more than 200 words giving reasons why he should not be recalled. No such statement of justification shall be printed on the ballot unless it is delivered to the filing official within 10 days of the date notice is given.

History: En. Sec. 14, I.M. No. 73, approved November 2, 1976; R.C.M. 1947, 59-625; amd. Sec. 3, Ch. 159, L. 1983.

2-16-622. Resignation of officer — proclamation of election. (1) If the officer named in the petition for recall submits his resignation in writing, it shall be accepted and become effective the day it is offered. The vacancy created by such resignation shall be filled as provided by law, provided that the officer named in the petition for recall may not be appointed to fill such vacancy. If the officer named in the petition for recall refuses to resign or does not resign within 5 days after the petition is filed, a special election shall be called unless the filing is within 90 days of a general election, in which case the question shall be placed on a separate ballot at the same time as the general election.

(2) The call of a special election shall be made by the governor in the case of a state or state-district officer or by the board or officer empowered by law to call special elections for a political subdivision in the case of any officer of a political subdivision of the state.

History: En. Sec. 13, I.M. No. 73, approved November 2, 1976; amd. Sec. 10, Ch. 364, L. 1977; R.C.M. 1947, 59-624.

Cross-References

Vacancy in state office — manner of filling, Title 2, ch. 16, part 5.

Vacancy on Supreme Court or in District Court — Judicial Nomination Commission, Title 3, ch. 1, part 10.

Vacancy in Legislature, Title 5, ch. 2, part 4.

Vacancy on Board of County Commissioners, 7-4-2106.

Vacancy in other county offices, 7-4-2206.

Vacancy in municipal elective offices, 7-4-4112.

General elections — date, 13-1-104.

Special elections, 13-1-108.

Vacancy in Office of County Superintendent of Schools, 20-3-202.

Vacancy in school district trustee position, 20-3-309.

2-16-623 through 2-16-630 reserved.

2-16-631. Notice of recall election. The notice of a recall election shall be in substantially the following form:

NOTICE OF RECALL ELECTION

Notice is hereby given pursuant to law that a recall election will be held on .... (Date) for the purpose of voting upon the recall of .... who holds the office of ....

DATED at ...., ... (Date)

History: En. Sec. 15, I.M. No. 73, approved November 2, 1976; amd. Sec. 11, Ch. 364, L. 1977; R.C.M. 1947, 59-626.

Cross-References

Notice of special elections, 13-1-108.

2-16-632. Conduct of special elections. A special election for recall shall be conducted and the results canvassed and certified in the same manner that the law in effect at the time of the election for recall requires for an election to fill the office that is the subject of the recall petition, except as herein otherwise provided. In the case of an official holding a nonelective office, the election shall be conducted and the results canvassed and certified in the same manner that the law in effect at the time of the election for recall requires for an election to fill the office of the person who has the power to appoint such official. The powers and duties conferred or imposed by law upon boards of election, registration officers, canvassing boards, and other public officials who conduct general elections are conferred and imposed upon similar officers conducting recall elections under the provisions of this section together with the penalties prescribed for the breach thereof.

History: En. Sec. 18, I.M. No. 73, approved November 2, 1976; R.C.M. 1947, 59-629; amd. Sec. 2, Ch. 308, L. 1979.

Cross-References

Elections — general provisions, Title 13.

Ballots, Title 13, ch. 12, part 2.

2-16-633. Form of ballot. (1) The ballot at such recall election shall set forth the statement contained in the recall petition stating the reasons for demanding the recall of such officer and the officer's statement of reasons why he should not be recalled. Then the question of whether the officer should be recalled shall be placed on the ballot in a form similar to the following:

☐ FOR recalling .... who holds the office of ....

☐ AGAINST recalling .... who holds the office of ....

(2) The form of the ballot shall be approved as provided in the election laws of this state.

History: En. Sec. 16, I.M. No. 73, approved November 2, 1976; amd. Sec. 12, Ch. 364, L. 1977; R.C.M. 1947, 59-627.

Cross-References

Ballots, Title 13, ch. 12, part 2.

2-16-634. Expenses of election. Expenses of a recall election shall be paid in the same manner as the expenses for any other election. The expenditure of such funds constitutes an emergency expenditure of funds, and the political subdivision affected may fund the costs of such an election through emergency funding procedures. In the event a recall election is held for a state or state-district officer, the legislature shall appropriate funds to reimburse the counties involved for costs incurred in running the election.

History: En. Sec. 19, I.M. No. 73, approved November 2, 1976; amd. Sec. 14, Ch. 364, L. 1977; R.C.M. 1947, 59-630.

Cross-References

County emergency expenditures, 7-6-2342.

School finance emergency expenditures, 20-9-161.

2-16-635. Officer to remain in office until results declared — filling of vacancy. The officer named in the recall petition continues in office until he resigns or the results of the recall election are officially declared. If a majority of those voting on the question vote to remove the officer, the office becomes vacant and the vacancy shall be filled as provided by law, provided that the officer recalled may in no event be appointed to fill the vacancy.

History: En. Sec. 17, I.M. No. 73, approved November 2, 1976; amd. Sec. 13, Ch. 364, L. 1977; R.C.M. 1947, 59-628.

Cross-References

Manner of filling vacancies:

State offices, Title 2, ch. 16, part 5.

Supreme Court or District Court, Title 3, ch. 1, part 10.

Legislature, Title 5, ch. 2, part 4.

Board of County Commissioners, 7-4-2106.

Other county officers, 7-4-2206.

Municipal elective offices, 7-4-4112.

County Superintendent of Schools, 20-3-202.

School district trustee, 20-3-309.

CHAPTER 17

PROPERTY AND SYSTEMS DEVELOPMENT AND MANAGEMENT

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2-17-106. Repealed.
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2-17-421. Use — state business only — exception — compensation for driving personal vehicle — penalty for private use.
2-17-422. Operating history.

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2-17-424 through 2-17-430 reserved.
2-17-431. Costs.
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Part 5 — Data Processing

2-17-501. Responsibilities of director of department of administration for data processing.
2-17-502. State information technology advisory council.
2-17-503. Security responsibilities of department of administration.

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Part 8 — Capitol Complex Master Plan Act

2-17-801. Short title.
2-17-802. Definitions.
2-17-803. Capitol complex advisory council established — membership — staff services — compensation.
2-17-804. Council duties and responsibilities.
2-17-805. Function of department of administration — capitol area master plan — advice of legislative council.
2-17-806. Department of administration to establish policies on capitol.
2-17-807. Approval for displays and naming buildings.
2-17-808 and 2-17-809 reserved.
2-17-810. Remodeling and renovation — senate chambers and former supreme court chambers to be preserved.
2-17-811. Custodial care of capitol buildings and grounds.
2-17-812. Inventory of improvements
2-17-813 through 2-17-815 reserved.
2-17-816. Parking citations within capitol complex.
2-17-817. Highway patrol officers' memorial.
2-17-818 through 2-17-824 reserved.
2-17-825. Report to legislature.

Part 1
Real Property and Buildings

2-17-101. Allocation of space. (1) The department of administration shall determine the space required by state agencies other than the university system and shall allocate space in buildings owned or leased by the state, based on each agency's need. To efficiently and effectively allocate space, the department periodically shall identify the amount, location, and nature of space used by each agency.

(2) An agency requiring additional space shall notify the department. The department, in consultation with the agency, shall determine the amount and nature of the space needed and locate space within a building owned or leased by the state to meet the agency's requirements. If space is not available in a building owned or leased by the state, the department shall locate space to be leased in an appropriate building or recommend alternatives to leasing, such as remodeling or exchanging space with another agency. A state agency may not lease, rent, or purchase property for quarters without prior approval of the department.

(3) (a) The location of the chambers for the house of representatives must be determined in the sole discretion of the house of representatives. The

location of the chambers of the senate must be determined in the sole discretion of the senate.

(b) Subject to 2-17-108, the department, with the advice of the legislative council, shall allocate other space for the use of the legislature, including but not limited to space for committee rooms and legislative offices.

(4) For state agencies located in a city other than Helena, the department shall consolidate the offices of these agencies in a single, central location within the city whenever the consolidation would result in a cost savings to the state while permitting sufficient space and facilities for the agencies. The department may purchase, lease, or acquire, by exchange or otherwise, land and buildings in the city to achieve consolidation. Offices of the law enforcement services division and motor vehicle division of the department of justice are exempted from consolidation.

History: En. Sec. 8, Ch. 271, L. 1963; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 82-3308; amd. Sec. 1, Ch. 700, L. 1983; amd. Sec. 1, Ch. 594, L. 1985; amd. Sec. 1, Ch. 655, L. 1989; amd. Sec. 1, Ch. 7, L. 1993; amd. Sec. 11, Ch. 530, L. 1995; amd. Sec. 1, Ch. 20, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 20 in (3)(b), at beginning, inserted "Subject to 2-17-108"; and made minor changes in style. Amendment effective February 12, 1997.

2-17-102. Warehouses. The department of administration may maintain, rent, lease, or construct warehouses.

History: En. Sec. 3, Ch. 197, L. 1921; re-en. Sec. 286, R.C.M. 1921; re-en. Sec. 286, R.C.M. 1935; amd. Sec. 2, Ch. 80, L. 1961; amd. Sec. 59, Ch. 326, L. 1974; R.C.M. 1947, 82-1903.

2-17-103. Press room. The department of administration may provide space in the capitol for the use of representatives of the press.

History: En. Sec. 1, Ch. 138, L. 1945; R.C.M. 1947, 43-601; amd. Sec. 1, Ch. 439, L. 1983; amd. Sec. 2, Ch. 20, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 20 substituted present section allowing allocation of space in the Capitol for former language that read: "The department of administration is required to provide for the use of representatives of the press a room on the third floor of the capitol to be used as a permanent press room." Amendment effective February 12, 1997.

2-17-104. Deductible insurance plan for state buildings and contents — administration. (1) A deductible plan of insurance may be established for use by the state in insuring state buildings and their contents.

(2) The administration of this section shall be placed in the department of administration with the cooperation of the insurance commissioner.

History: En. Secs. 1, 2, Ch. 86, L. 1971; R.C.M. 1947, 78-1102, 78-1103.

Cross-References

Comprehensive insurance plan for state, 2-9-201.

Insurance Commissioner, Title 33, ch. 1, part 3.

2-17-105. Insurance on state buildings — use of proceeds — building replacement. (1) Money received by the state as indemnification for damage to state buildings, except buildings procured by the department of transportation by purchase or condemnation for right-of-way purposes, must be deposited in the state special revenue fund. The money is statutorily appropriated, as provided in 17-7-502, for the purposes of subsections (2) and (3).

(2) The money may only be:

(a) used to repair the damaged property;

(b) used to replace the damaged property, subject to the limitations in subsection (3); or

(c) transferred to the fund and account from which the premiums were paid on the policy covering the building. Money transferred in this manner may not be spent by the institution or agency having custody of the damaged property but must be available for future legislative appropriation. If the money is not spent or committed within 2 years from the time that it is received, the money automatically reverts to the fund and account from which the premiums were paid.

(3) If an insured building is totally destroyed or so badly damaged that repair is impractical, the governing board or officer responsible for the building may request that any money received by the state as indemnification for property damage be used to replace the building only if the proposed replacement is designed to be used for the same general purposes as the damaged or destroyed building. If the governing board or officer determines that the building should not be replaced, any money received by the state as indemnification for property damage over and above any outstanding debt on the building must be transferred as provided in subsection (2)(c).

History: En. Sec. 1, Ch. 110, L. 1963; amd. Sec. 23, Ch. 326, L. 1974; R.C.M. 1947, 78-1101; amd. Sec. 1, Ch. 281, L. 1983; amd. Sec. 4, Ch. 703, L. 1985; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 1, Ch. 422, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 422 in (1), at end, inserted last sentence providing for statutory appropriation; in (2), at beginning, deleted "These moneys are statutorily appropriated as provided in 17-7-502 and"; in (3), in first sentence after "responsible for the building may", substituted "request that" for "authorize" and at end deleted "and for this purpose the amounts available therefore are statutorily appropriated as provided in 17-7-502"; and made minor changes in style. Amendment effective July 1, 1997.

2-17-106. Repealed. Sec. 156, Ch. 370, L. 1987.

History: En. Sec. 1, Ch. 479, L. 1975; R.C.M. 1947, 82-3308.1.

2-17-107. State consideration for use of heritage properties. (1)(a) Prior to the purchase, lease, or rent of space for state agency purposes, the director of the department involved may request the state historic preservation officer to identify existing properties within the geographical area where the space is needed that:

(i) are heritage properties as defined in 22-3-421 which are listed or eligible to be listed in the register of historic places; and

(ii) may be suitable, either in their existing condition or through repair or alteration, for such purposes.

(b) The state historic preservation officer shall provide the requested information within 30 days.

(2) The director may review and give consideration to the properties identified by the state historic preservation officer unless use of the space would not be feasible and prudent compared with available alternatives.

History: En. Sec. 1, Ch. 257, L. 1983.

2-17-108. Allocation of legislative rooms and offices. Notwithstanding the provisions of 2-17-101, after each session of the legislature, the department of administration shall conduct an inventory of the rooms and offices in the capitol controlled by the house of representatives and the senate. Legislative space in the capitol may not be reduced without the consent of the legislature. The control of the rooms and offices may not be changed without the permission of the speaker of the house of representatives, the minority leader of the house, the president of the senate, and the minority leader of the senate.

History: En. Sec. 2, Ch. 655, L. 1989; amd. Sec. 3, Ch. 20, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 20 substituted present section regarding allocation of legislative space in the Capitol for former language that read: "Notwithstanding the provisions of 2-17-101, the house of representatives and the senate shall continue to occupy and control the rooms and offices in the capitol building that they occupied and controlled during the 50th and 51st legislatures." Amendment effective February 12, 1997.

2-17-109. Renumbered 2-17-810. Sec. 9, Ch. 476, L. 1997.

2-17-110. Repealed. Sec. 156, Ch. 370, L. 1987.

History: En. Sec. 3, Ch. 700, L. 1983.

2-17-111. Renumbered 2-17-811. Sec. 9, Ch. 476, L. 1997.

2-17-112. Fire protection for state-owned buildings — department of administration — state fire prevention and investigation program. (1) The department of administration shall obtain information necessary to prepare a budget for each biennium for fire protection services for state-owned buildings that present particular firefighting problems as determined by the state fire prevention and investigation program of the department of justice. In preparing the budget, the state may consider providing protection directly or contracting for protection with a local fire service and making payments to local governments for fire services provided to state agencies, all of which are subject to appropriation by the legislature.

(2) The department of justice shall review provisions for protection of state-owned buildings in connection with inspections conducted under 50-3-102.

History: En. 82-3310.1, 82-3310.2 by Secs. 1, 2, Ch. 481, L. 1977; R.C.M. 1947, 82-3310.1, 82-3310.2; amd. Sec. 12, Ch. 575, L. 1981; amd. Sec. 1, Ch. 706, L. 1991.

2-17-113. Renumbered 2-17-816. Sec. 9, Ch. 476, L. 1997.

2-17-114 through 2-17-120 reserved.

2-17-121 through 2-17-126. Repealed. Sec. 11, Ch. 467, L. 1987.

Compiler's Comments

Histories of Repealed Sections:

2-17-121 through 2-17-126. En. Secs. 1 through 6, Ch. 144, L. 1979.

2-17-127. Repealed. Sec. 74, Ch. 18, L. 1995.

History: En. Sec. 3, Ch. 691, L. 1989.

2-17-128 through 2-17-130 reserved.

2-17-131. Renumbered 2-17-817. Sec. 9, Ch. 476, L. 1997.

Part 2

Equipage and Supplies

2-17-201. Inspection of property and warehouses. The warehouses, supplies, furnishings, and property of all kinds used in and about the business of the state is subject at all times to the inspection of the department of administration and any officer or employee of any agency.

History: En. Sec. 13, Ch. 66, L. 1923; re-en. Sec. 293.13, R.C.M. 1935; amd. Sec. 78, Ch. 326, L. 1974; R.C.M. 1947, 82-1923.

2-17-202. Inventory — property to be charged to receiving agency. (1) Each person in charge of any state property must, upon request of the department of administration, furnish a sworn statement of all personal property in his possession or under his charge belonging to the state, together with an estimate of its value. He must furnish any other information in connection therewith as the department requires.

(2) Each state department, office, board, commission, and institution must be charged with all items of personal property and all other personal property placed at the disposal of any such state department, office, board, commission, and institution after June 30, 1923, and shall be credited with all worn out, used, lost, injured, or destroyed property from time to time, as may be reported to the department of administration and shall be held responsible for all items of personal property not accounted for.

History: (1)En. Sec. 1, Ch. 66, L. 1923; re-en. Sec. 293.1, R.C.M. 1935; amd. Sec. 66, Ch. 326, L. 1974; Sec. 82-1911, R.C.M. 1947; (2)En. Sec. 2, Ch. 66, L. 1923; re-en. Sec. 293.2, R.C.M. 1935; Sec. 82-1912, R.C.M. 1947; R.C.M. 1947, 82-1911, 82-1912(part).

Part 3

Communication Systems

2-17-301. Supervision of mailing, duplicating, copying, and telephone facilities. (1) The department of administration shall maintain and supervise any central mailing, messenger service, duplicating, and copying facilities for state agencies in the capitol area.

(2) The department shall maintain and supervise any central telephone switchboard for state agencies located in Helena.

(3) Cost records shall be maintained and agencies shall be billed for services received.

History: (1), (3)En. Sec. 6, Ch. 271, L. 1963; amd. Sec. 1, Ch. 298, L. 1967; amd. Sec. 3, Ch. 101, L. 1969; amd. Sec. 2, Ch. 313, L. 1971; amd. Sec. 80, Ch. 326, L. 1974; Sec. 82-3306, R.C.M. 1947; (2)En. Sec. 7, Ch. 271, L. 1963; amd. Sec. 98, Ch. 326, L. 1974; Sec. 82-3307, R.C.M. 1947; R.C.M. 1947, 82-3306, 82-3307; amd. Sec. 1, Ch. 486, L. 1983.

2-17-302. Communication systems. (1) The department of administration shall:

(a) provide communication services to all agencies of state government. The state communications system must be capable of passing voice, video, data, written information, and other forms of communication to and from distant points.

(b) exercise general supervision over all existing communications systems for all agencies of state government;

(c) plan, review, and approve any additional installations of communications equipment and systems for all agencies of state government, including mail equipment for state agencies within a 10-mile radius of the capitol area. In approving the installation of additional communications equipment or systems, the department shall first consult with and consider the recommendations and advice of the executive heads of the various state agencies.

(d) approve standards and procedures for selection, acquisition, and operation of communications equipment;

(e) ensure that all communications equipment is properly maintained. The department is authorized to establish a centralized maintenance program for all state communications equipment and to contract the equipment maintenance if it is in the state's best interest. The department shall maintain cost records and bill agencies for services rendered.

(f) provide assistance to the legislature, governor, and state agencies relative to state and interstate communication matters;

(g) provide a means whereby political subdivisions of the state may utilize the state communications system, upon terms and under conditions as the department may establish;

(h) accept federal funds granted by congress or by executive order for any purposes of this section, as well as gifts and donations from individuals and private organizations or foundations;

(i) foster the development of new and innovative communications systems and techniques within the state, including but not limited to satellite communications and high-speed, high-density data transfer. To carry out the purposes of this section, the department may contract with qualified private organizations, foundations, or individuals if it is in the state's best interest.

(j) pay for and allocate to state agencies, as part of services rendered, the cost of any performance audit of the state communications system performed by or at the direction of the legislative auditor.

(2) The department may provide assistance to political subdivisions or nonprofit organizations, upon terms that the department may establish, relative to state and interstate communications systems and techniques.

(3) Adequate rules for the use of any communications equipment and facilities must be adopted by the:

(a) department for executive branch agencies;

(b) supreme court for judicial branch agencies; and

(c) legislature by joint rule for members of the legislature and legislative branch agencies.

History: En. Sec. 3, Ch. 230, L. 1971; amd. Sec. 6, Ch. 215, L. 1974; amd. Sec. 86, Ch. 326, L. 1974; amd. Sec. 1, Ch. 315, L. 1975; amd. Sec. 1, Ch. 341, L. 1977; R.C.M. 1947, 82-3325; amd. Sec. 1, Ch. 307, L. 1983; amd. Sec. 1, Ch. 42, L. 1987; amd. Sec. 1, Ch. 2, L. 1993.

2-17-303. Transfer of funds, equipment, facilities, and employees. (1) In order to provide for a centralized, economical, efficient, and effective maintenance program for all state communications equipment and facilities and to ensure that needless duplication of efforts in this field do not occur, the department of administration may order such transfer of appropriated funds, custody, and control of equipment and facilities and employees to the department as may be necessary to implement this program. Upon transfer, as authorized in this section, a credit account shall be established in the name of the agency from which transfer is made in the amount of funds appropriated and the market value of equipment and facilities. Such credit account shall be used to defray the costs of maintenance and repair as provided in 2-17-302(1)(e).

(2) The provisions of this section shall in no manner affect the rights or privileges of any employee transferred to the department of administration under the public employees' retirement system, the group insurance plan, or personnel system.

History: En. 82-3325.1 and 82-3325.2 by Sec. 2, 3, Ch. 315, L. 1975; R.C.M. 1947, 82-3325.1, 82-3325.2.

2-17-304. Bases of director's decisions. It is incumbent on the department of administration to base all decisions pertinent to Montana's state communication services on the factors of cost, quality of service, availability of service, and ability to maintain the system.

History: En. Sec. 7, Ch. 230, L. 1971; amd. Sec. 87, Ch. 326, L. 1974; R.C.M. 1947, 82-3329.

2-17-305. Cooperation with other government agencies not limited. This part shall not be construed so as to prohibit or limit a state agency from availing itself of connection to and cooperation with other state and federal agencies for the purpose of communications and information gathering and distributing services.

History: En. Sec. 8, Ch. 230, L. 1971; R.C.M. 1947, 82-3330.

2-17-306. Exemption of law enforcement communications system — exception. The provisions of this part shall not apply to the law enforcement communications system or its successor except as to the provisions dealing with the purchase, maintenance, and allocation of communication facilities. However, the department of justice shall cooperate with the department of administration to coordinate the communications networks of the state.

History: En. Sec. 9, Ch. 230, L. 1971; amd. Sec. 88, Ch. 326, L. 1974; R.C.M. 1947, 82-3331.

Cross-References

Law enforcement teletypewriter communications system, 44-2-301.

2-17-307 through 2-17-310 reserved.

2-17-311. Legislative recognition — FCC contact agency. The legislature recognizes that prior to issuing a land mobile public safety radio license, the federal communications commission (FCC) attempts to coordinate the license application with other licenses to minimize the interference caused by the overlapping of frequencies on the same channel or an adjacent channel. The department of administration is the contact agency within the state of Montana to assist the FCC in the coordination of land mobile public safety radio frequencies.

History: En. Sec. 1, Ch. 228, L. 1983.

2-17-312. Land mobile public safety radio frequency utilization plan. (1) In order to assist the federal communications commission in the coordination of land mobile public safety radio frequencies, the department of administration shall develop and maintain a land mobile public safety radio frequency utilization plan.

(2) The plan must include but is not limited to:

(a) frequency usage and allocation standards relating to radio antenna height and power, types of use intended for the requested frequency, and other technical features of proposed radio systems;

(b) technical standards applying to types of radio usage;

(c) policies and procedures for the management of statewide mutual aid frequencies.

History: En. Sec. 2, Ch. 228, L. 1983.

2-17-313. Rulemaking authority. (1) The department of administration may adopt rules to implement the land mobile public safety radio frequency utilization plan provided for in 2-17-312.

(2) The department shall obtain input from all state and local users of public safety radio services.

History: En. Sec. 3, Ch. 228, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

2-17-314 through 2-17-320 reserved.

2-17-321. Definition of electronic access system. As used in 2-17-322 and 2-17-323, "electronic access system" means a system capable of making various types of information accessible by means of a computer and a telecommunications facility. Electronic access systems include but are not limited to:

(1) bulletin board systems;

(2) internet world wide web servers; or

(3) other computer or telecommunications systems.

History: En. Sec. 1, Ch. 268, L. 1989; amd. Sec. 1, Ch. 440, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 440 in first sentence substituted electronic access system for electronic bulletin board as defined term, substituted "means a system capable of making" for "means a remote data base system containing", and at end substituted "by means of a computer and a telecommunications facility" for "by means of a computer, a modem, and a telephone line" and inserted second sentence, including introductory clause, and (1), (2), and (3) giving examples of electronic access systems.

2-17-322. Establishment. (1) The department of administration shall establish and maintain appropriate electronic access systems for state agencies to use as a means of conveying information to the citizens of Montana. State agencies may establish electronic access systems that meet minimum technical standards established by the department. Agencies involved in communicating information to the public shall use these systems to provide appropriate information to the public, including but not limited to:

(a) environmental assessments;

(b) rulemaking notices;

(c) board vacancy notices as required by 2-15-201;

(d) agency reports mandated by statute;

(e) parks reports required by 23-1-110;

(f) requests for bids or proposals; and

(g) public meeting notices and agendas.

(2) The purpose of electronic access systems is to encourage the practice of providing for direct citizen access to state computerized information.

History: En. Sec. 2, Ch. 268, L. 1989; amd. Sec. 1, Ch. 166, L. 1993; amd. Sec. 2, Ch. 440, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 440 in (1), near middle of first sentence, substituted "maintain appropriate electronic access systems" for "maintain a centralized electronic bulletin board system", inserted second sentence authorizing state agencies to establish electronic access systems, and in third sentence substituted "shall use these systems to provide appropriate information to the public" for "shall maintain appropriate information on the bulletin board system"; and in (2) substituted "The purpose of electronic access systems" for "The purpose of the centralized electronic bulletin board system".

2-17-323. Responsibilities. (1) The department of administration shall:

(a) in collaboration with other state agencies, set standards for the selection of software for the electronic access systems;

(b) establish appropriate services to support state agencies' use of the electronic access systems;

(c) develop user-friendly file transfer and message systems for entities regularly interacting with state government, such as professional associations and citizen groups, and promote the systems' use to reduce copying and mailing costs for state government; and

(d) determine procedures for use of the electronic access systems.

(2) The department shall provide security to protect the integrity of its electronic access systems. Each department is responsible for ensuring the integrity and appropriateness of the information that it places in the electronic access systems.

(3) The department shall provide for an equitable method for recovering the cost of operating the electronic access systems that the department provides.

History: En. Sec. 3, Ch. 268, L. 1989; amd. Sec. 2, Ch. 166, L. 1993; amd. Sec. 3, Ch. 440, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 440 in (1)(a), at beginning, inserted "in collaboration with other state agencies" and at end substituted "for the electronic access systems" for "for the electronic bulletin boards"; in (1)(b) substituted "services to support state agencies' use of the electronic access systems" for "services on the centralized electronic bulletin board system to support file transfer by all state agencies"; at end of (1)(d) substituted "for use of the electronic access systems" for "for bulletin board use"; in (2), at end of first sentence, substituted "integrity of its electronic access systems" for "integrity of its electronic bulletin board system" and at end of second sentence substituted "in the electronic access systems" for "in the system"; and in (3) substituted "the electronic access systems that the department provides" for "the electronic bulletin board system".

Cross-References

Security responsibilities of Department of Administration, 2-17-503.

Part 4

Vehicles

2-17-401. Title to motor vehicles. The legal title to state-owned motor vehicles shall be held in the name of the state only, and all agencies holding title to motor vehicles are hereby required to transfer the same to the state. In instances where such transfer would affect the federal funding of the agency involved, the agency transferring a vehicle in accordance with this part shall be reimbursed in the amount of the fair value of the vehicle transferred necessary to assure continued participation in federal funding of the program.

History: En. Sec. 1, Ch. 320, L. 1971; amd. Sec. 173, Ch. 316, L. 1974; amd. Sec. 1, Ch. 355, L. 1974; R.C.M. 1947, 53-514(part).

2-17-402. Seal on motor vehicles. A motor vehicle owned by the state must have a seal 8 inches in diameter placed upon the vehicle in accordance with the rules adopted by the department of transportation.

History: En. Sec. 3, Ch. 320, L. 1971; amd. Sec. 175, Ch. 316, L. 1974; amd. Sec. 3, Ch. 355, L. 1974; R.C.M. 1947, 53-516; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 1, Ch. 535, L. 1991.

2-17-403. Requisitions for purchases. All requisitions for motor vehicle purchases shall be submitted to the department of administration twice yearly at the times that it specifies. Other requisitions for automobile purchases may not be accepted by it unless the governor considers the purchase to be an emergency necessity.

History: En. Sec. 6, Ch. 320, L. 1971; amd. Sec. 178, Ch. 316, L. 1974; amd. Sec. 6, Ch. 355, L. 1974; R.C.M. 1947, 53-519(1).

2-17-404 through 2-17-410 reserved.

2-17-411. Helena-based motor pool — department of transportation — exceptions. (1) The department of transportation is the custodian of all motor vehicles operated out of the Helena area used primarily to carry passengers or having a cargo rating of three-quarters of a ton or less and which do not carry specialized equipment that would render them unfit for interagency use, owned or leased by the state or its agencies.

(2) This part does not apply to a motor vehicle used in the service of the governor, the attorney general, or the highway patrol.

History: (1)En. Sec. 1, Ch. 320, L. 1971; amd. Sec. 173, Ch. 316, L. 1974; amd. Sec. 1, Ch. 355, L. 1974; Sec. 53-514, R.C.M. 1947; (2)En. Sec. 7, Ch. 320, L. 1971; amd. Sec. 179, Ch. 316, L. 1974; Sec. 53-520, R.C.M. 1947; R.C.M. 1947, 53-514(part), 53-520; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 2, Ch. 535, L. 1991.

2-17-412. Assignment and transfer. (1) The department of transportation may assign the use of state-owned or leased motor vehicles under its control to state officers, state agencies, or employees of state agencies.

(2) All motor vehicles in the custody of the department of transportation that are not placed under custody of the department by 2-17-411 must be equitably transferred to the custody of those agencies that have need of vehicles as demonstrated by use records.

History: (1)En. Sec. 2, Ch. 320, L. 1971; amd. Sec. 174, Ch. 316, L. 1974; amd. Sec. 2, Ch. 355, L. 1974; Sec. 53-515, R.C.M. 1947; (2)En. 53-519.1 by Sec. 7, Ch. 355, L. 1974; Sec. 53-519.1, R.C.M. 1947; R.C.M. 1947, 53-515(part), 53-519.1; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 3, Ch. 535, L. 1991.

2-17-413. Interagency rental. The department of transportation shall promulgate regulations for interagency rental of motor vehicles. These regulations shall govern the manner in which vehicles in the custody of one agency and for a time not required for use by that agency can be rented by another agency for its use. These regulations shall also establish the charge for vehicle rental which may include reimbursement of actual costs for administration, maintenance, service, operation, storage, and replacement costs of these vehicles.

History: En. 53-519.2 by Sec. 8, Ch. 355, L. 1974; R.C.M. 1947, 53-519.2; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 4, Ch. 535, L. 1991.

2-17-414. State vehicles to use gasohol — definition — record of purchase required — audit. (1) Each department, agency, institution, office, board, and commission of the executive, legislative, and judicial branches of state government and each state institution of higher education owning or operating a motor vehicle capable of burning gasohol shall take all reasonable steps to ensure that the operators of those vehicles use gasohol in the vehicles if gasohol is reasonably and commercially available within the operating area of the vehicle and is priced competitively with the motor vehicle fuel otherwise used by the vehicle.

(2) For purposes of this section, "gasohol" means all products commonly or commercially known or sold as gasohol and used for the purpose of effectively and efficiently operating internal combustion engines, consisting of not less than 10% anhydrous ethanol produced from agricultural products, including wood or wood products.

(3) An entity subject to the requirements of subsection (1) shall require that each purchase of gasohol by the operator of a motor vehicle using gasohol is reported to that entity by the motor vehicle operator.

(4) An entity subject to the requirements of subsection (1) may not take any disciplinary, judicial, administrative, or other adverse action against the operator of a motor vehicle for failing to purchase gasohol for the operation of the motor vehicle.

(5) An entity subject to the requirements of subsection (1) shall retain for the period of time required by law the record of the purchase of gasohol used. The purchase records must be reviewed by the legislative auditor during every financial audit of the entity.

History: En. Sec. 1, Ch. 462, L. 1991.

2-17-415 through 2-17-420 reserved.

2-17-421. Use — state business only — exception — compensation for driving personal vehicle — penalty for private use. (1) A state officer or employee may not use a state-owned or leased motor vehicle for his own personal and private use, nor may he be compensated for driving his own motor vehicle unless that motor vehicle is used on state business.

(2) The department of transportation may require that a decal be affixed to the instrument panel of each state-owned vehicle with the following information contained on the decal:

"Any officer or employee of the state government who uses or authorizes the use of any state-owned motor-propelled vehicle, or of any motor-propelled vehicle leased by the state government, for other than official purposes may be removed from office by the head of the department or establishment concerned."

(3) The private use of state-owned or leased motor vehicles for emergency travel-related purposes or exceptional circumstances by employees in a travel status may be approved by the head of the department or agency concerned.

(4) The head of the department or agency concerned may terminate the employment of any employee using state-owned or leased vehicles for personal or private use.

History: En. Sec. 4, Ch. 320, L. 1971; amd. Sec. 176, Ch. 316, L. 1974; amd. Sec. 4, Ch. 355, L. 1974; R.C.M. 1947, 53-517; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 5, Ch. 535, L. 1991.

Cross-References

Mileage allowance — private vehicle for state business, 2-18-503.

2-17-422. Operating history. All motor vehicle operating history records for motor vehicles under control of the department of transportation must be entered in the department of transportation. These records must show the purchase price of the vehicle and the items of expense incurred in the operation of the vehicle, including the expenses of gas, oil, repairs, labor, storage, and service. A complete summary of the operating cost and history record of all state-owned or leased vehicles and trucks must be prepared for each fiscal year.

History: En. Sec. 6, Ch. 320, L. 1971; amd. Sec. 178, Ch. 316, L. 1974; amd. Sec. 6, Ch. 355, L. 1974; R.C.M. 1947, 53-519(2); amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 6, Ch. 535, L. 1991.

2-17-423. Use rules. (1) The department of transportation may adopt and enforce reasonable rules governing the use and operation of motor vehicles under control of the department.

(2) The department shall establish reasonable rules governing:

(a) employee responsibility for misuse and negligent damage of state-owned or leased vehicles;

(b) determination of when the use of privately owned vehicles on state business may be justified as in the best interest of the state;

(c) procedures for determining when a state vehicle is not available for use.

(3) The department shall adopt and formulate travel rules providing:

(a) for filing an application for travel showing necessity for trips, points to be visited, approximate time of departure and return;

(b) for filing a report upon completion of the trip, showing actual points reached, mileage traveled, and car cost record data; and

(c) for recording in the car operating history record book all items of expense incurred in the purchase of gas, oil, repairs, labor, storage, or service.

History: (1)En. Sec. 2, Ch. 320, L. 1971; amd. Sec. 174, Ch. 316, L. 1974; amd. Sec. 2, Ch. 355, L. 1974; Sec. 53-515, R.C.M. 1947; (2)En. 53-519.3 by Sec. 11, Ch. 355, L. 1974; Sec. 53-519.3, R.C.M. 1947; (3)En. Sec. 5, Ch. 320, L. 1971; amd. Sec. 177, Ch. 316, L. 1974; amd. Sec. 5, Ch. 355, L. 1974; Sec. 53-518, R.C.M. 1947; R.C.M. 1947, 53-515(part), 53-518, 53-519.3; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 7, Ch. 535, L. 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

2-17-424 through 2-17-430 reserved.

2-17-431. Costs. The department of transportation may charge the individual state agencies using the motor vehicles the actual costs for administration and their maintenance, service, storage, and replacement.

History: En. Sec. 2, Ch. 320, L. 1971; amd. Sec. 174, Ch. 316, L. 1974; amd. Sec. 2, Ch. 355, L. 1974; R.C.M. 1947, 53-515(part); amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 8, Ch. 535, L. 1991.

2-17-432. Violation a misdemeanor. A state officer or employee violating this part is guilty of a misdemeanor.

History: En. Sec. 8, Ch. 320, L. 1971; amd. Sec. 180, Ch. 316, L. 1974; R.C.M. 1947, 53-521; amd. Sec. 9, Ch. 535, L. 1991.

Cross-References

Misdemeanor, 46-18-212.

Part 5
Data Processing

Part Cross-References

Legislative Branch computer system planning, Title 5, ch. 11, part 4.

Telecommunications and data processing contracts — application of purchasing laws, 18-4-132.

Telecommunications and data processing contracts — terms, extensions, and time limits, 18-4-313.

2-17-501. Responsibilities of director of department of administration for data processing. (1) Except as provided in subsection (2), the director of the department of administration, in cooperation with state agencies, shall:

(a) establish policies and a statewide plan for the operation and development of data processing for state government;

(b) review and approve agency specifications and procurement methods for the acquisition of data processing equipment;

(c) review and approve agency specifications and procurement methods for the acquisition of software to ensure network compatibility and conformity with the statewide data processing plan;

(d) review and approve all contracts for private sector data processing services to ensure conformance with the statewide data processing plan and statewide data network; and

(e) operate and maintain a central computer center and a statewide data network for the use of all state agencies and political subdivisions.

(2) (a) The responsibilities of the director under subsections (1)(b) through (1)(d) do not apply to the Montana university system or to the office of the superintendent of public instruction. The university system and the office of the superintendent of public instruction are exempt from the requirements of subsections (1)(b) through (1)(d) unless a data processing activity proposed by the university system or the office of the superintendent of public instruction affects the operation of the central computer center or the statewide data network. If the university system or the office of the superintendent of public instruction determines that the central computer center or the statewide data network will be affected by the proposed activity, the agency shall notify the director and the proposed activity is subject to the requirements of subsections (1)(b) through (1)(d).

(b) For purposes of subsection (2)(a), a data processing activity affects the operation of the central computer center or the statewide data network if it adds to the processing workload, capacity, or support service requirements of the central computer center or the statewide data network.

(3) When reviewing data processing activities submitted by the university system or the office of the superintendent of public instruction under subsections (1)(b) through (1)(d), the department shall consider and make reasonable allowances for the unique educational needs and characteristics of

the university system and the office of the superintendent of public instruction to communicate and share data with units of the university system and with school districts.

(4) As used in subsections (1) and (2), the following definitions apply:

(a) "Central computer center" means any:

(i) shared or sharable computer system and facilities provided by the department for use by government agencies; or

(ii) computer operations and software development support services provided by the department.

(b) "Statewide data network" means any telecommunications facility, circuits, equipment, or software administered by the department for the transmission of data from one computer to another by government agencies.

History: En. Sec. 1, Ch. 175, L. 1979; amd. Sec. 2, Ch. 486, L. 1983; MCA 1981, 18-4-111; redes. 2-17-501 by Code Commissioner, 1983; amd. Sec. 1, Ch. 207, L. 1985; amd. Sec. 1, Ch. 216, L. 1985; amd. Sec. 1, Ch. 76, L. 1993.

Cross-References

Supervision of mailing, data processing, duplicating, copying, and telephone facilities, 2-17-301.

2-17-502. State information technology advisory council. (1) The department of administration shall create a state information technology advisory council under 2-15-122.

(2) The members of the advisory council must be selected from a diverse group in order to adequately represent the interests of state agencies, including the university system, and local governments.

(3) In addition to the advisory functions assigned by the department, the advisory council shall review statewide information and data processing policies, make recommendations regarding the application of new information processing technology in state government, and advise the department on long-term strategic planning for the use of information processing technology in state government.

(4) The advisory council shall also provide a forum to:

(a) guide state agencies and local governments in the development and deployment of intergovernmental information resources;

(b) encourage cooperative efforts among state agencies and local governments in the development of information resources;

(c) develop and recommend to the department standards and policies for intergovernmental information resources; and

(d) advise the department in the development of cooperative contracts for the purchase of information resources.

History: En. Sec. 3, Ch. 486, L. 1983; amd. Sec. 2, Ch. 76, L. 1993; amd. Sec. 1, Ch. 56, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 56 in (2), at end, inserted "and local governments"; inserted (4) requiring the advisory council to guide and encourage state agencies and local governments in the development of information resources, to recommend to the Department standards and policies for intergovernmental information resources, and to advise the Department in the development of cooperative contracts for purchasing information resources; and made minor changes in style.

2-17-503. Security responsibilities of department of administration. The department of administration is responsible for providing centralized management and coordination of state policies for security of data and information technology resources and shall:

(1) establish and maintain the minimum security standards and policies to implement 2-15-114, including the physical security of central and backup computer facilities consistent with these standards;

(2) establish guidelines to assist agencies in identifying electronic data processing personnel occupying positions of special trust or responsibility or sensitive locations;

(3) establish standards and policies for the exchange of data between data centers or departments by hardwired or nondedicated telecommunications to ensure that exchanges do not jeopardize data security and confidentiality;

(4) coordinate and provide for a training program regarding security of data and information technology resources to serve governmental technical and managerial needs;

(5) include appropriate security requirements in the specifications for solicitation of state contracts for procuring data and information technology resources; and

(6) upon request, provide technical and managerial assistance relating to the security program.

History: En. Sec. 3, Ch. 592, L. 1987.

Cross-References

Department of Administration responsibilities, 2-17-323.

Parts 6 and 7 reserved

Part 8

Capitol Complex Master Plan Act

2-17-801. Short title. This part may be cited as the "Capitol Complex Master Plan Act".

History: En. Sec. 1, Ch. 476, L. 1997.

2-17-802. Definitions. As used in this part, the following definitions apply:

(1) "Capitol complex" means the capitol building and all the state buildings within a 10-mile radius of the capitol building.

(2) "Council" means the capitol complex advisory council established in 2-17-803.

(3) "Legislative council" means the legislative council established in 5-11-101.

History: En. Sec. 2, Ch. 476, L. 1997.

2-17-803. Capitol complex advisory council established — membership — staff services — compensation. (1) There is a capitol complex advisory council.

(2) The council consists of nine members as follows:

(a) two members of the house of representatives appointed by the speaker on a bipartisan basis;

(b) two members of the senate appointed by the committee on committees on a bipartisan basis;

(c) a public representative appointed by the governor; and

(d) the director or the director's designee of each of the following agencies:

(i) the Montana historical society established in 22-3-101;

(ii) the Montana arts council established in 2-15-1513;

(iii) the department of administration established in 2-15-1001; and

(iv) the department of fish, wildlife, and parks established 2-15-3401.

(3) The council shall select a presiding officer, who may call meetings to conduct council business. The departments of administration and fish, wildlife, and parks shall provide staff services to the council.

(4) (a) The council member appointed under subsection (2)(c) is entitled to compensation not to exceed the amount provided for in 5-2-301(3) for compensation of legislators for each day in which the member is actually and necessarily engaged in performing council duties and to travel expense reimbursement as provided in 2-18-501 through 2-18-503.

(b) A council member designated under subsection (2)(d) is not entitled to compensation for services as a member of the council.

(c) A council member appointed under subsections (2)(a) or (2)(b) is entitled to compensation and expenses as provided in 5-2-302.

History: En. Sec. 3, Ch. 476, L. 1997.

2-17-804. Council duties and responsibilities. (1) The council shall:

(a) review proposals for permanent displays or the naming of state buildings in the capitol complex;

(b) advise the legislature on the placement of busts, statues, memorials, monuments, or art displays of a permanent nature within public areas of the capitol complex, including the executive residence and the original governor's mansion;

(c) advise the department of administration on interior decoration of the capitol; and

(d) advise the department of fish, wildlife, and parks on grounds maintenance and grounds displays.

(2) In advising the legislature on permanent displays, the council shall consider whether the bust, statue, memorial, monument, or art display:

(a) reasonably fits the master plan for the capitol and adjacent grounds developed under 2-17-805;

(b) adversely alters the appearance of the capitol or other capitol complex buildings;

(c) unreasonably affects foot traffic on the capitol complex;

(d) adversely impacts existing maintenance programs or the utility infrastructure;

(e) recognizes a person or event of statewide significance and relevance;

(f) has artistic merit in its design and construction;

(g) will be safely and aesthetically suited to its installation site; and

(h) has adequate funding for design, installation, and maintenance.

(3) By November 15 of each year preceding a legislative session, the council shall report to the legislature on requests that it has reviewed for naming buildings and for permanently placing items in the capitol or on the capitol complex grounds. The report must include a recommendation to the legislature on whether reviewed requests meet the criteria established by this section. If

a request meets the criteria, the council shall recommend a timeframe during which the project should be authorized.

History: **En. Sec. 4, Ch. 476, L. 1997.**

2-17-805. Function of department of administration — capitol area master plan — advice of legislative council. (1) The department of administration shall establish and maintain a master plan for the orderly development of state buildings in the immediate area of the capital city. The master plan must be developed and maintained, with consideration given to the following factors:

(a) the needs of the state relative to the location and design of buildings to be constructed, purchase of land, parking facilities, traffic management, and landscaping;

(b) the ordinances, plans, requirements, and proposed improvements of the city of Helena and Lewis and Clark County, based without limitation upon zoning regulations, population trends, and plans for rapid transit development;

(c) any other factors that bear upon the orderly, integrated, and cooperative development of the state, the city of Helena, Lewis and Clark County, and state property in the immediate area of the capital city.

(2) The legislative council shall consult with and advise the department of administration concerning the assignment of space in the capitol.

(3) The legislative council shall consult with and advise the Montana historical society on the placement of busts, statues, memorials, or art displays of a permanent nature within public areas of the capitol building. An item may not be permanently displayed unless approved by the legislature.

(4) The Montana historical society shall protect and preserve the permanent artwork in the capitol building and request funding for periodic inspection, maintenance, and repair of the artwork from the trust fund established in 15-35-108 for protection of works of art in the state capitol and other cultural and aesthetic projects.

(5) The legislative council shall serve as a long-range building committee to recommend to the legislature and the department of administration construction and remodeling priorities for the capitol.

History: **En. Sec. 2, Ch. 141, L. 1979; amd. Sec. 2, Ch. 608, L. 1981; amd. Sec. 5, Ch. 700, L. 1983; amd. Sec. 3, Ch. 7, L. 1993; Sec. 5-17-102, MCA 1991; redes. 5-11-115 by Code Commissioner, 1993; amd. Sec. 8, Ch. 476, L. 1997; Sec. 5-11-115, MCA 1995; redes. 2-17-805 by Sec. 9, Ch. 476, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 476 at beginning of (1) substituted "With advice from the council, the departments of administration and fish, wildlife, and parks" for "The department of administration" and in two places, before "master plan", inserted "long-range"; deleted former (3) that read: "The legislative council shall consult with and advise the Montana historical society on the placement of busts, statues, memorials, or art displays of a permanent nature within public areas of the capitol building. An item may not be permanently displayed unless approved by the legislature"; and made minor changes in style.

Cross-References

Allocation of office space, 2-17-101.

Custodial care of capitol buildings and grounds, 2-17-811.

2-17-806. Department of administration to establish policies on capitol. The department of administration, with the advice of the council, shall establish policies governing maintenance and beautification of the capitol, executive residence, and original governor's mansion. The policies must provide that all historic furnishings original to the capitol remain in the building if an agency relocates and may designate appropriate wall, floor, and window coverings for the capitol. The Montana Administrative Procedure Act does not apply to this part.

History: En. Sec. 6, Ch. 476, L. 1997.

2-17-807. Approval for displays and naming buildings. (1) A state building in the capitol complex may not be named after an individual, and a bust, statue, memorial, monument, or art display may not be permanently displayed in the capitol or on the capitol complex grounds unless the building name or display is approved by the legislature and complies with this section.

(2) A state building in the capitol complex may not be named after an individual unless the individual has been deceased for at least 5 years.

(3) All busts, statues, memorials, monuments, or art displays authorized, but not installed within 5 years of authorization, must be reauthorized.

History: En. Sec. 5, Ch. 476, L. 1997.

2-17-808 and 2-17-809 reserved.

2-17-810. Remodeling and renovation — senate chambers and former supreme court chambers to be preserved. (1) If future senate bodies determine that the location of the senate chambers should be moved, the department of administration shall keep and maintain the physical structure and location of the present senate chambers as a single room that must be used for legislative purposes. The room may not be divided in any manner, and the artwork and height of the ceiling must be maintained and preserved.

(2) The department of administration shall keep and maintain the physical structure and location of the supreme court chambers, which were occupied by the Montana supreme court until the new justice building was completed and dedicated in 1983, as a single room that must be used for legislative committee purposes. The room may not be divided in any manner, and the artwork and height of the ceiling must be maintained and preserved.

History: En. Sec. 2, Ch. 700, L. 1983; amd. Sec. 2, Ch. 7, L. 1993; Sec. 2-17-109, MCA 1995; redes. 2-17-810 by Sec. 9, Ch. 476, L. 1997.

2-17-811. Custodial care of capitol buildings and grounds. (1) The department of administration is custodian of all state property in the state capitol area, which is the geographic area within a 10-mile radius of the state capitol.

(2) It is the duty of the department to supervise and direct the work of caring for and maintaining buildings and equipment in the state capitol area. The department shall provide or approve all custodial, maintenance, and security work done on state-owned or leased buildings in the state capitol area.

(3) A state agency may not alter, improve, repair, or remodel a state building in the state capitol area without the approval of the department.

(4) It is the duty of the department of fish, wildlife, and parks to maintain or approve the maintenance of the grounds in the state capitol area.

History: En. Sec. 9, Ch. 271, L. 1963; amd. Sec. 98, Ch. 326, L. 1974; Sec. 82-3309, R.C.M. 1947; En. Sec. 10, Ch. 271, L. 1963; Sec. 82-3310, R.C.M. 1947; R.C.M. 1947, 82-3309, 82-3310; amd. Sec. 1, Ch. 69, L. 1985; amd. Sec. 1, Ch. 362, L. 1989; amd. Sec. 1, Ch. 625, L. 1991; Sec. 2-17-111, MCA 1995; redes. 2-17-811 by Sec. 9, Ch. 476, L. 1997.

2-17-812. Inventory of improvements. (1) The department of fish, wildlife, and parks shall maintain an inventory of commemorative displays, statues, artwork, plaques, and other improvements upon the grounds of the capitol complex, including the executive residence and original governor's mansion.

(2) The department of administration shall maintain an inventory of commemorative displays, statues, artwork, plaques, and other improvements in the capitol building.

(3) Both departments shall make their inventories available to the council.

History: En. Sec. 7, Ch. 476, L. 1997.

2-17-813 through 2-17-815 reserved.

2-17-816. Parking citations within capitol complex. The director of the department of administration may in his discretion enter into an agreement with the city of Helena, Montana, to authorize capitol security guards employed by the department to issue citations for parking violations as defined by state or municipal laws which occur within the boundaries of the capitol complex or on streets or alleys contiguous thereto. All such citations must be considered within the jurisdiction of the city of Helena, Montana, and must be handled in the same manner as citations issued by peace officers thereof.

History: En. Sec. 1, Ch. 337, L. 1985; Sec. 2-17-113, MCA 1995; redes. 2-17-816 by Sec. 9, Ch. 476, L. 1997.

Cross-References

Parking permits for handicapped, 49-4-301 through 49-4-306.

Power of local authorities to adopt traffic regulations, 61-8-103.

Parking regulations, 61-8-353 through 61-8-357.

Penalty for leaving vehicle on public property, 61-8-719.

2-17-817. Highway patrol officers' memorial. (1) The department of administration shall set aside on the capitol grounds an area on the north side of the capitol for a memorial to Montana's slain highway patrol officers. The area must be agreed upon between the Montana highway patrol and the department of fish, wildlife, and parks and must maintain the historical design integrity of the block on which the capitol is located, also known as capitol square.

(2) The memorial must be constructed to consider long-term maintenance efficiency and must be paid for by private donations. The memorial must be maintained with the assistance of private donations as part of the capitol grounds maintenance program provided in 2-17-811.

History: En. Sec. 1, Ch. 163, L. 1995; Sec. 2-17-131, MCA 1995; redes. 2-17-817 by Sec. 9, Ch. 476, L. 1997.

2-17-818 through 2-17-824 reserved.

2-17-825. Report to legislature. The legislative council may prepare a written report of its activities and recommendations related to its duties under 2-17-805(2) for the purpose of assisting the legislature in determining whether the recommendations should be implemented.

History: En. Sec. 3, Ch. 141, L. 1979; amd. Sec. 6, Ch. 700, L. 1983; amd. Sec. 17, Ch. 112, L. 1991; amd. Sec. 4, Ch. 7, L. 1993; amd. Sec. 15, Ch. 349, L. 1993; Sec. 5-17-103, MCA 1991; redes. 5-11-116 by Code Commissioner, 1993; Sec. 5-11-116, MCA 1995; redes. 2-17-825 by Sec. 9, Ch. 476, L. 1997.

CHAPTER 18

STATE EMPLOYEE CLASSIFICATION, COMPENSATION, AND BENEFITS

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Chapter Cross-References

Pension systems, Title 19.

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

Part 1
General Provisions

2-18-101. Definitions. As used in parts 1 through 3 and part 10 of this chapter, the following definitions apply:

(1) "Agency" means a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget.

(2) "Anniversary date", except as modified in part 3 of this chapter, means the month and day on which an employee began the most recent period of uninterrupted state service.

(3) "Base salary" means the amount of compensation paid to an employee, excluding:

(a) state contributions to group benefits provided in 2-18-703;

(b) overtime;

(c) fringe benefits as defined in 39-2-903; and

(d) the longevity allowance provided in 2-18-304.

(4) "Board" means the board of personnel appeals established in 2-15-1705.

(5) "Class" means one or more positions substantially similar with respect to the kind or nature of duties performed, responsibility assumed, and level of difficulty so that the same descriptive title may be used to designate each position allocated to the class, similar qualifications may be required of persons

appointed to the positions in the class, and the same pay rate or pay grade may be applied with equity.

(6) "Class series benchmark" means a representative position within a class series that is used to illustrate the application of the job evaluation factors that are used to classify positions in the classification plan. A benchmark description describes the duties and responsibilities assigned and the factors applied to the class series benchmark.

(7) "Class specification" means a written descriptive statement of the duties and responsibilities characteristic of a class of positions and includes the education, experience, knowledge, skills, abilities, and qualifications necessary to perform the work of the class.

(8) "Compensation" means the annual or hourly wage or salary and includes the state contribution to group benefits under the provisions of 2-18-703.

(9) "Department" means the department of administration created in 2-15-1001.

(10) Except in 2-18-306, "employee" means any state employee other than an employee excepted under 2-18-103 or 2-18-104 from the statewide classification system.

(11) "Entry salary" means the entry-level base salary for each grade provided in 2-18-312.

(12) "Grade" means the number assigned to a pay range within a pay schedule in part 3 of this chapter.

(13) "Job sharing" means the sharing by two or more persons of a position.

(14) "Market ratio" means an employee's base salary divided by the market salary for the employee's pay grade.

(15) "Market salary" means the midpoint in a pay grade provided in 2-18-312, based on the average base salary that other employers pay to employees in comparable occupations as determined by the department's salary survey of the relevant labor market.

(16) "Permanent employee" means an employee who is designated by an agency as permanent and who has attained or is eligible to attain permanent status.

(17) "Permanent status" means the state an employee attains after satisfactorily completing an appropriate probationary period.

(18) "Personal staff" means those positions occupied by employees appointed by the elected officials enumerated in Article VI, section 1, of the Montana constitution or by the public service commission as a whole.

(19) "Position" means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.

(20) "Program" means a combination of planned efforts to provide a service.

(21) "Seasonal employee" means a permanent employee who is designated by an agency as seasonal, who performs duties interrupted by the seasons, and who may be recalled without the loss of rights or benefits accrued during the preceding season.

(22) "Short-term worker" means a person who:

(a) is hired by an agency for an hourly wage established by the agency;

(b) may not work for the agency for more than 90 days in a continuous 12-month period;

(c) is not eligible for permanent status;

(d) may not be hired into another position by the agency without a competitive selection process; and

(e) is not eligible to earn the leave and holiday benefits provided in part 6 or the group insurance benefits provided in part 7.

(23) "Temporary employee" means an employee who:

(a) is designated as temporary by an agency for a definite period of time not to exceed 12 months;

(b) performs temporary duties or permanent duties on a temporary basis;

(c) is not eligible for permanent status;

(d) is terminated at the end of the employment period; and

(e) is not eligible to become a permanent employee without a competitive selection process.

History: Ap.p. Sec. 1, Ch. 440, L. 1973; amd. Sec. 1, Ch. 488, L. 1977; Sec. 59-903, R.C.M. 1947; Ap.p. Sec. 1, Ch. 563, L. 1977; Sec. 59-915, R.C.M. 1947; R.C.M. 1947, 59-903(1), (2), (part(3)), (4), (5), 59-915; amd. Sec. 1, Ch. 512, L. 1979; amd. Sec. 1, Ch. 678, L. 1979; amd. Sec. 1, Ch. 421, L. 1981; amd. Sec. 1, Ch. 684, L. 1983; amd. Sec. 1, Ch. 720, L. 1991; amd. Sec. 2, Ch. 455, L. 1995; amd. Sec. 1, Ch. 339, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 339 inserted definitions of permanent employee, seasonal employee, short-term worker, and temporary employee; deleted definitions of permanent position, seasonal position, and temporary position (see 1997 Session Law for former text); in definition of job sharing, after "position", deleted "that is considered an aggregate or permanent position"; in definition of permanent status, at end after "period", deleted "in a permanent position"; and made minor changes in style. Amendment effective July 1, 1997.

2-18-102. Personnel administration — general policy setting. (1) Except as otherwise provided by law or collective bargaining agreement, the department shall:

(a) encourage and exercise leadership in the development of effective personnel administration within the several agencies in the state and make available the facilities of the department to this end;

(b) foster and develop programs for recruitment and selection of capable persons for employment and for the improvement of employee effectiveness, including training, ethical conduct, safety, health, counseling, welfare, discipline, grievances, and evaluation for productivity and retention in permanent status;

(c) foster, develop, and promote job sharing in agencies;

(d) investigate from time to time the operation and effect of parts 1 and 2 of this chapter and the policies made under those parts and report the findings and recommendations to the governor;

(e) establish policies, procedures, and forms for the maintenance of records of all employees in the state service;

(f) apply and carry out parts 1 and 2 and the policies under those parts and perform any other lawful acts that may be necessary or desirable to carry out the purposes and provisions of parts 1 and 2.

(2) The department may delegate authority granted to it under parts 1 and 2 to agencies in the state service that effectively demonstrate the ability to carry out the provisions of parts 1 and 2, provided that the agencies remain in

compliance with policies, procedures, timetables, and standards established by the department.

(3) The department shall develop and issue personnel policies for the state and shall adopt rules to implement this part, except 2-18-111. Adequate public notice must be given to all interested parties of proposed changes or additions to the personnel policies before the date on which they are to take effect. If requested by any of the affected parties, the department shall schedule a public hearing on proposed changes or additions to the personnel policies before the date on which they are to take effect.

(4) The department shall develop model rules of conduct for all state employees based upon the provisions of Title 2, chapter 2. The department shall provide employees with a pamphlet summarizing the provisions of Title 2, chapter 2. Each state agency shall adopt the model rules of conduct and additional rules appropriate to the specific circumstances of the agency.

History: En. Sec. 14, Ch. 440, L. 1973; R.C.M. 1947, 59-913; amd. Sec. 2, Ch. 568, L. 1979; amd. Sec. 2, Ch. 684, L. 1983; amd. Sec. 1, Ch. 84, L. 1995; amd. Sec. 11, Ch. 562, L. 1995; amd. Sec. 2, Ch. 339, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 339 in (1)(b), near beginning after "capable persons for", substituted "employment" for "permanent, seasonal, temporary, and other types of positions". Amendment effective July 1, 1997.

2-18-103. *(Temporary)* **Officers and employees excepted.** Parts 1 through 3 and 10 do not apply to the following officers and employees in state government:

(1) elected officials;

(2) county assessors and their chief deputies;

(3) employees of the office of consumer counsel;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) investment officer, assistant investment officer, executive director, and three professional staff positions of the board of investments;

(11) four professional staff positions under the board of oil and gas conservation;

(12) assistant director for security of the Montana state lottery;

(13) executive director and senior investment officer of the Montana board of science and technology development;

(14) executive director and employees of the state compensation insurance fund;

(15) state racing stewards employed by the executive secretary of the Montana board of horseracing;

(16) executive director of the Montana wheat and barley committee;

(17) commissioner of banking and financial institutions;

(18) training coordinator for county attorneys;

(19) employees of an entity of the legislative branch consolidated, as provided in 5-2-504.

2-18-103. *(Effective July 1, 1999)* **Officers and employees excepted.** Parts 1 through 3 and 10 do not apply to the following officers and employees in state government:

(1) elected officials;

(2) county assessors and their chief deputies;

(3) employees of the office of consumer counsel;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) investment officer, assistant investment officer, executive director, and five professional staff positions of the board of investments;

(11) four professional staff positions under the board of oil and gas conservation;

(12) assistant director for security of the Montana state lottery;

(13) executive director and employees of the state compensation insurance fund;

(14) state racing stewards employed by the executive secretary of the Montana board of horseracing;

(15) executive director of the Montana wheat and barley committee;

(16) commissioner of banking and financial institutions;

(17) training coordinator for county attorneys;

(18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504.

History: En. Sec. 2, Ch. 440, L. 1973; amd. Sec. 1, Ch. 256, L. 1974; amd. Sec. 1, Ch. 391, L. 1975; amd. Sec. 2, Ch. 488, L. 1977; amd. Sec. 1, Ch. 565, L. 1977; R.C.M. 1947, 59-904; amd. Sec. 2, Ch. 365, L. 1979; amd. Sec. 2, Ch. 412, L. 1979; amd. Sec. 2, Ch. 512, L. 1979; amd. Sec. 1, Ch. 176, L. 1983; amd. Sec. 11, Ch. 161, L. 1987; amd. Sec. 17, Ch. 581, L. 1987; amd. Sec. 21, Ch. 316, L. 1989; amd. Sec. 39, Ch. 613, L. 1989; amd. Sec. 2, Ch. 660, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 2, Ch. 447, L. 1991; amd. Sec. 2, Ch. 507, L. 1991; amd. Sec. 2, Ch. 395, L. 1993; amd. Sec. 14, Ch. 630, L. 1993; amd. Sec. 3, Ch. 455, L. 1995; amd. Sec. 11, Ch. 545, L. 1995; amd. Sec. 24, Ch. 546, L. 1995; amd. Sec. 3, Ch. 339, L. 1997; amd. Sec. 3, Ch. 417, L. 1997; amd. Sec. 2, Ch. 549, L. 1997.

Compiler's Comments

1997 Amendments: Chapter 339 in introductory clause substituted "Parts 1 through 3 and 10 do not apply to the following officers and employees in state government" for "Parts 1 and 2 do not apply to the following positions in state government" and deleted former (1)(j) that read: "(j) teachers under the authority of the department of corrections or the department of public health and human services"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 417 in introductory clause substituted "Parts 1 through 3 and 10" for "Parts 1 and 2" and substituted "officers and employees" for "positions"; inserted (19) ((18) in version effective July 1, 1999) relating to legislative employees; deleted former (2) that read: "(2) Employees of an entity of the legislative branch, other than the office of consumer counsel, are exempt from the application of 2-18-1011 through 2-18-1013. With respect to entities of the legislative branch, other than the office of consumer counsel:

(a) as used in parts 1 through 3 of this chapter, references to the "department of administration" or "department" apply to the legislative council established by 5-11-101, which may delegate administrative duties to the legislative services division established by 5-11-111;

(b) as used in 2-18-102, the term "governor" applies to the legislature; and

(c) as used in 2-18-204, the term "budget director" applies to the "approving authority" as defined in 17-7-102"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 549 in (10) substituted "five" for "three"; deleted former (1)(n) that read: "(n) executive director and senior investment officer of the Montana board of science and technology development"; and made minor changes in style. Amendment effective July 1, 1999.

Cross-References

Salaries of Supreme Court Justices, 2-16-403.

Salaries of certain elected state officials, 2-16-405.

Salaries of District Court Judges, 3-5-211.

Compensation of legislators, 5-2-301.

2-18-104. Exemption for personal staff — limit. (1) Subject to the limitations in subsections (2) and (3), members of a personal staff are exempt from parts 1 through 3 and 10.

(2) The personal staff who are exempted by subsection (1) may not exceed 10 unless otherwise approved by the department according to criteria developed by the department. Under no circumstances may the total exemptions of each elected official exceed 15.

(3) The number of members of the personal staff of the public service commission who are exempted by subsection (1) may not exceed 10.

History: En. Sec. 1, Ch. 440, L. 1973; amd. Sec. 1, Ch. 488, L. 1977; R.C.M. 1947, 59-903(part (3)); amd. Sec. 3, Ch. 512, L. 1979; amd. Sec. 1, Ch. 538, L. 1983; amd. Sec. 1, Ch. 661, L. 1987; amd. Sec. 3, Ch. 660, L. 1989; amd. Sec. 4, Ch. 339, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 339 in (1), at end after "from", substituted "parts 1 through 3 and 10" for "the application of 2-18-204, 2-18-205, 2-18-207, and 2-18-1011 through 2-18-1013". Amendment effective July 1, 1997.

2-18-105. Repealed. Sec. 4, Ch. 239, L. 1989.

History: En. Sec. 16, Ch. 440, L. 1973; R.C.M. 1947, 59-914.

2-18-106. No limitation on legislative authority — transfer of funds. (1) Parts 1, 2, and 3 do not limit the authority of the legislature relative to appropriations for salary and wages. The budget director shall adjust his determinations in accordance with legislative appropriations.

(2) Unexpended agency appropriation balances in the first year of the biennium may be transferred to the second year of the biennium to offset the costs of pay increases.

History: (1)En. Sec. 13, Ch. 440, L. 1973; amd. Sec. 5, Ch. 181, L. 1975; R.C.M. 1947, 59-912; amd. Sec. 2, Ch. 678, L. 1979; (2)En. Sec. 10, Ch. 421, L. 1981; amd. Sec. 6, Ch. 710, L. 1983.

2-18-107. Job-sharing positions — benefits. (1) Job sharing may be used, to the extent practicable, by each agency as a means of promoting increased productivity and employment opportunities. However, job sharing may be actively pursued to fill vacated or new positions and may not be actively pursued to replace current full-time employees. However, on request of a current employee, his position may be considered for job sharing. A position may be filled by more than one incumbent currently in a full-time position.

(2) Employees in a job-sharing status are entitled to holiday pay, annual leave, sick leave, and health benefits on the same basis as permanent part-time employees provided for in 2-18-603, 2-18-611, 2-18-618, and 2-18-703.

(3) Employees classified in a part-time status may not be reclassified to a job-sharing status while employed in the position classified as part-time.

History: En. Sec. 3, Ch. 684, L. 1983; amd. Sec. 1, Ch. 106, L. 1985.

Cross-References

Administration of leave rules, 2-18-604.
Annual leave, 2-18-611.
Sick leave, 2-18-618.
Group insurance for public employees, 2-18-702.

2-18-108 and 2-18-109 reserved.

2-18-110. Shift differential and hazardous duty pay negotiated. (1) Shift differential pay for those employees who are regularly scheduled to work other than the day shift is a mandatory subject of collective bargaining.

(2) Hazardous duty pay for those employees who work under hazardous conditions is a mandatory subject of collective bargaining.

History: En. Sec. 11, Ch. 720, L. 1991.

2-18-111. Hiring preference for residents of Indian reservations for state jobs within reservation — rules. (1) A state agency that operates within an Indian reservation shall give a preference in hiring for employment with the state agency to an Indian resident of the reservation who has substantially equal qualifications for the position.

(2) The commissioner of labor and industry shall enforce this section and investigate complaints of its violation and may adopt rules to implement this section.

(3) For the purposes of this section, the following definitions apply:

(a) "Employment" means being employed as a permanent, temporary, or seasonal employee as defined in 2-18-101 for a state position. The term does not include:

(i) a state elected official;

(ii) appointment by an elected official to a body, such as a board, commission, committee, or council;

(iii) appointment by an elected official to a public office if the appointment is provided for by law; or

(iv) engagement as an independent contractor or employment by an independent contractor.

(b) "Indian" means a person who is enrolled or who is a lineal descendant of a person enrolled upon an enrollment listing of the bureau of Indian affairs or upon the enrollment listing of a recognized Indian tribe, domiciled in the United States.

(c) "State agency" means a department, office, board, bureau, commission, agency, or other instrumentality of the executive or judicial branches of the government of this state.

History: En. Sec. 1, Ch. 506, L. 1991; amd. Sec. 5, Ch. 339, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 339 in (1), near middle after "hiring for", deleted "a position of"; in (3) inserted definition of employment and deleted definition of position (see 1997 Session Law for former text); and made minor changes in style. Amendment effective July 1, 1997.

2-18-112 through 2-18-114 reserved.

2-18-115. Exemption for certain university temporary employees — "temporary employee" defined. (1) With the exception of 2-18-603, the requirements of parts 6 and 7 of this chapter do not apply to a temporary employee of the university system.

(2) As used in this section, "temporary employee" means an employee of the university system who is hired into a position that is not permanent and who has negotiated an alternative benefits package through a labor organization certified to represent employees of the university system pursuant to Title 39, chapter 31. The employer contribution to the alternative benefits package may not exceed the cost of the benefits that the employee would otherwise be entitled to through employment.

History: En. Sec. 1, Ch. 121, L. 1995.

Part 2
Classification

2-18-201. Development of personnel classification plan. The department shall develop a personnel classification plan for all state positions and classes of positions in state service following hearings involving affected employees and employee organizations, except those exempt in 2-18-103 and 2-18-104. The legislative council shall in a like manner develop a classification plan for employees of the legislative branch, other than those of the office of consumer counsel.

History: En. Sec. 3, Ch. 440, L. 1973; R.C.M. 1947, 59-905; amd. Sec. 4, Ch. 512, L. 1979; amd. Sec. 12, Ch. 545, L. 1995.

2-18-202. Guidelines for classification. (1) In providing for the classification plan, the department shall group all positions in the state service into defined classes based on similarity of duties performed, responsibilities assumed, and complexity of work so that:

(a) similar qualifications of education, experience, knowledge, skill, and ability can be required of applicants for each position in the class;

(b) the same title can be used to identify each position in the class;

(c) similar pay may be provided under the same conditions with equity to each position within the class.

(2) A class may consist of only one position.

History: En. Sec. 4, Ch. 440, L. 1973; R.C.M. 1947, 59-906.

Cross-References

Classification — grievance, 2-18-1011 through 2-18-1013.

2-18-203. Review of positions — change in classification. (1) The department shall continuously review all positions on a regular basis and adjust classifications to reflect significant changes in duties and responsibilities. In the event that adjustments are to be made to class specifications, class series benchmarks, or criteria used for allocating positions to classes affecting employees within a bargaining unit, the department shall consult with the representative of the bargaining unit prior to implementation of the adjustments, except for blue-collar and teachers' classification plans, which plans must remain mandatory negotiable items under Title 39, chapter 31.

(2) Employees and employee organizations must be given the opportunity to appeal the allocation or reallocation of a position to a class. The grade assigned to a class and factors assigned to class series benchmarks are not appealable subjects under 2-18-1011 through 2-18-1013.

(3) The period of time for which retroactive pay for a classification appeal may be awarded under 2-18-1011 through 2-18-1013 or under parts 1 through 3 of this chapter may not extend beyond 30 days prior to the date on which the appeal was filed.

History: En. Sec. 5, Ch. 440, L. 1973; amd. Sec. 1, Ch. 166, L. 1975; amd. Sec. 1, Ch. 471, L. 1977; R.C.M. 1947, 59-907; amd. Sec. 1, Ch. 577, L. 1979; amd. Sec. 2, Ch. 421, L. 1981; amd. Sec. 4, Ch. 455, L. 1995; amd. Sec. 10, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (1), in second sentence after "teachers'", deleted "and liquor store clerks'"; and made minor changes in style. Amendment effective March 12, 1997.

Cross-References

Grievance regarding classification, 2-18-1011.

2-18-204. Determination of number and classes of employees in each agency. (1) Based on documentation to be submitted by each agency, the department shall determine the classes of positions of employees of each agency or program thereof before the beginning of each fiscal year. At any time, upon request of the agency, the department may amend the classes of positions of employees in any agency or program thereof.

(2) Based on documentation to be submitted by each agency, the budget director shall determine the number of positions and employees (full-time equivalents) of each agency or program thereof prior to preparation of the executive budget and before the beginning of each fiscal year. At any time, upon the request of the agency, the budget director may amend the number of positions or employees (full-time equivalents) in any agency or program thereof.

(3) This section does not limit legislative authority to amend the determinations of the department or the budget director.

History: En. Sec. 10, Ch. 440, L. 1973; amd. Sec. 2, Ch. 181, L. 1975; R.C.M. 1947, 59-909.

2-18-205. Department authorization for change in classes of positions. An agency may not change the classes of positions under its authority without the authorization of the department.

History: En. Sec. 12, Ch. 440, L. 1973; amd. Sec. 4, Ch. 181, L. 1975; R.C.M. 1947, 59-911; amd. Sec. 1, Ch. 468, L. 1979.

2-18-206. List of positions maintained. To facilitate state budgeting and as directed by the budget director, each agency shall maintain a list of current authorized positions, the number of positions in each class, and the salaries or wages being paid, appropriated, or proposed for each class.

History: En. Sec. 9, Ch. 440, L. 1973; amd. Sec. 1, Ch. 181, L. 1975; R.C.M. 1947, 59-908.

2-18-207. Department authorization for increase of salary or wage of class. An agency may not increase the salary or wage of any class of positions without authorization of the department.

History: En. Sec. 11, Ch. 440, L. 1973; amd. Sec. 3, Ch. 181, L. 1975; R.C.M. 1947, 59-910; amd. Sec. 2, Ch. 468, L. 1979.

2-18-208. Comparable worth. The department of administration shall, in its continuous efforts to enhance the current classification plan and pay schedules, work toward the goal of establishing a standard of equal pay for comparable worth. This standard for the classification plan shall be reached by:

(1) eliminating, in the classification of positions, the use of judgments and factors that contain inherent biases based on sex; and

(2) comparing, in the classification of positions, the factors for determining job worth across occupational groups whenever those groups are dominated by males or females.

History: En. Sec. 1, Ch. 310, L. 1983.

Cross-References

Human Rights Act, Title 49, ch. 2.

2-18-209. Periodic evaluation. The department of administration shall periodically evaluate the extent to which Montana's classification plan, pay schedules, and statutes adhere to or fall short of the standard of equal pay for comparable worth. The department may make recommendations to the legislature regarding impediments to meeting this standard.

History: En. Sec. 2, Ch. 310, L. 1983; amd. Sec. 10, Ch. 112, L. 1991; amd. Sec. 8, Ch. 349, L. 1993.

Part 3

Compensation Determination

Part Compiler's Comments

Study of Protective Services Professionals' Pay Schedules: Section 1, Ch. 363, L. 1997, provided: "(1) The department shall study, with the cooperation of the department of justice, the department of transportation, the department of corrections, and other state agencies with personnel who will be included on the schedule, a pay schedule for protective services professionals. The pay schedule must be implemented for the period beginning July 1, 1999, and ending June 30, 2001. Insofar as the pay schedule applies to employees of a collective bargaining unit, its implementation is a negotiable subject under 39-31-305.

(2) "Protective services professional" means:

(a) a highway patrol officer, as defined in 61-1-305, except the chief, as defined in 61-1-302;

(b) an agent, as described in 44-2-111;

(c) a person authorized by the department of transportation or the department of justice to conduct an inspection pursuant to 61-9-501;

(d) a person whose primary work function is to supervise or otherwise guard persons incarcerated in a component of the department of corrections described in 53-1-202(2); or

(e) a person in an occupation identified by the department that is similar to those in subsections (2)(a) through (2)(d)."

Report to Legislature: Section 2, Ch. 363, L. 1997, provided: "By November 1, 1998, the department of administration shall submit to the 56th legislature a report on the results of the study conducted pursuant to [section 1] [not codified, see compiler's comment above for section text]. The report may contain proposed legislation to implement the pay schedule developed pursuant to [section 1] [not codified, see compiler's comment above for section text]."

Effective Date: Section 3, Ch. 363, L. 1997, provided: "[This act] is effective July 1, 1997."

Part Cross-References

Salaries of certain elected state officials, 2-16-405.

2-18-301. Purpose and intent of part — rules. (1) The purpose of this part is to provide the market-based compensation necessary to attract and retain competent and qualified employees in order to perform the services that the state is required to provide to its citizens.

(2) It is the intent of the legislature that compensation plans for state employees, excluding those employees excepted under 2-18-103 or 2-18-104 and excluding employees compensated under 2-18-313 and 2-18-315, be based on an analysis of the labor market as provided by the department in a salary survey. The salary survey must be submitted to the office of budget and program planning as a part of the information required by 17-7-111.

(3) Except as provided in 2-18-110, pay adjustments and pay schedules provided for in 2-18-303 and in 2-18-312, 2-18-313, and 2-18-315 supersede any other plan or systems established through collective bargaining after the adjournment of the 55th legislature.

(4) Pay levels provided for in 2-18-312, 2-18-313, and 2-18-315 may not be increased through collective bargaining after adjournment of the 55th legislature.

(5) Total funds required to implement the pay schedules provided for in 2-18-312, 2-18-313, and 2-18-315 for any employee group or bargaining unit may not be increased through collective bargaining over the amount appropriated by the 55th legislature.

(6) The department shall administer the pay program established by the legislature on the basis of merit, internal equity, and competitiveness to external labor markets when fiscally able.

(7) The department may promulgate rules not inconsistent with the provisions of this part, collective bargaining statutes, or negotiated contracts to carry out the purposes of this part.

History: En. 59-922 by Sec. 8, Ch. 563, L. 1977; R.C.M. 1947, 59-922; amd. Sec. 3, Ch. 678, L. 1979; amd. Sec. 3, Ch. 421, L. 1981; amd. Sec. 7, Ch. 710, L. 1983; amd. Sec. 1, Ch. 740, L. 1985; amd. Sec. 2, Ch. 661, L. 1987; amd. Sec. 4, Ch. 660, L. 1989; amd. Sec. 2, Ch. 720, L. 1991; amd. Sec. 9, Ch. 349, L. 1993; amd. Sec. 1, Ch. 640, L. 1993; amd. Sec. 5, Ch. 455, L. 1995; amd. Sec. 11, Ch. 42, L. 1997; amd. Sec. 4, Ch. 417, L. 1997.

Compiler's Comments

1997 Amendments: Chapter 42 in (2), (3), (4), and (5) deleted reference to 2-18-314; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 417 in (2), after "2-18-313", substituted "and" for "through"; and in (3), (4), and (5), after "2-18-312", substituted "2-18-313, and" for "through" and substituted "55th legislature" for "54th legislature". Amendment effective July 1, 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Compensation complaint, 2-18-1011.

Collective bargaining for public employees, Title 39, ch. 31.

2-18-302. Salary schedules maintained by department. The department shall maintain a schedule of all salaries paid to personnel of civil executive state offices and shall only approve payroll claims agreeing with that schedule. All changes in personnel or salary status shall be authorized as provided by law, and the department shall alter the schedule accordingly when notified by the authorizing agency. However, no changes in personnel or salary status may be authorized that will cause an agency to exceed its appropriation or that will result in a deficiency or supplemental appropriation request to the legislature.

History: En. Sec. 4, Ch. 97, L. 1961; amd. Sec. 49, Ch. 326, L. 1974; R.C.M. 1947, 82-109.4.

2-18-303. Procedures for using pay schedules. (1) The pay schedules provided in 2-18-312 must be implemented as follows:

(a) The pay schedules provided in 2-18-312 indicate the entry salary and market salary for each grade for positions classified under the provisions of part 2 of this chapter.

(b) Each employee newly hired by the state of Montana must be hired at the entry rate, except as provided in subsections (7) and (8).

(c) On the first day of the first complete pay period in fiscal year 1998, each employee is entitled to the amount of the employee's base salary as it was on June 30, 1997.

(d) (i) Effective on the first day of the pay period that includes an employee's anniversary date during the fiscal years ending June 30, 1998, and June 30, 1999, an employee's market ratio must be compared to the target market ratio in the matrix that corresponds to the employee's grade level and completed years of uninterrupted state service. For employees hired on or before September 30, 1994, the anniversary date is October 1.

(ii) The matrix for the target market ratios is as follows:

TARGET MARKET RATIOS

Grade	Years										
	0	1	2	3	4	5	6	7	8	9	10
4	0.844	0.874	0.904	0.935	0.967	0.999	1.000	1.000	1.000	1.000	1.000
5	0.842	0.871	0.900	0.930	0.961	0.992	1.000	1.000	1.000	1.000	1.000
6	0.840	0.868	0.896	0.925	0.955	0.985	1.000	1.000	1.000	1.000	1.000
7	0.838	0.865	0.892	0.920	0.949	0.978	1.000	1.000	1.000	1.000	1.000
8	0.836	0.862	0.889	0.916	0.944	0.972	1.000	1.000	1.000	1.000	1.000
9	0.834	0.859	0.885	0.911	0.938	0.965	0.993	1.000	1.000	1.000	1.000
10	0.832	0.857	0.882	0.908	0.934	0.961	0.988	1.000	1.000	1.000	1.000
11	0.830	0.854	0.878	0.903	0.928	0.954	0.980	1.000	1.000	1.000	1.000
12	0.828	0.851	0.875	0.899	0.924	0.949	0.975	1.000	1.000	1.000	1.000
13	0.826	0.849	0.872	0.896	0.920	0.945	0.970	0.996	1.000	1.000	1.000
14	0.824	0.846	0.869	0.892	0.915	0.939	0.963	0.988	1.000	1.000	1.000
15	0.822	0.844	0.866	0.888	0.911	0.934	0.958	0.982	1.000	1.000	1.000
16	0.820	0.841	0.863	0.885	0.907	0.930	0.953	0.977	1.000	1.000	1.000
17	0.818	0.839	0.860	0.882	0.904	0.926	0.949	0.972	0.996	1.000	1.000
18	0.816	0.836	0.857	0.878	0.899	0.921	0.943	0.966	0.989	1.000	1.000
19	0.814	0.834	0.854	0.875	0.896	0.917	0.939	0.961	0.984	1.000	1.000
20	0.812	0.831	0.851	0.871	0.892	0.913	0.935	0.957	0.979	1.000	1.000
21	0.810	0.829	0.849	0.869	0.889	0.910	0.931	0.953	0.975	0.997	1.000
22	0.808	0.827	0.846	0.866	0.886	0.906	0.927	0.948	0.970	0.992	1.000
23	0.806	0.825	0.844	0.863	0.883	0.903	0.923	0.944	0.965	0.987	1.000
24	0.804	0.822	0.841	0.860	0.879	0.899	0.919	0.940	0.961	0.982	1.000
25	0.802	0.820	0.838	0.857	0.876	0.895	0.915	0.935	0.956	0.977	0.999

(iii) On the first day of the pay period that includes an employee's anniversary date during the fiscal years ending June 30, 1998, and June 30, 1999, the employee's base salary must be increased to the greater of:

(A) the market salary for the employee's grade multiplied by the target ratio that corresponds to the employee's grade level and completed years of uninterrupted state service not to exceed 4%;

(B) if under subsection (1)(d)(iii)(A), progression from one target market ratio to the next exceeds 3%, then the employee's base salary increased by the amount of that progression plus 1%; or

(C) the employee's base salary as it was on the last day of the pay period immediately preceding the pay period that includes the employee's anniversary date, plus 1%.

(e) An employee's base salary may be no less than the entry salary for the employee's assigned grade.

(f) The maximum salary for each grade is determined by subtracting the entry salary from the market salary and adding that amount to the market salary.

(2) The pay schedules provided in 2-18-312 and the provisions of subsection (1) of this section do not apply to those teachers or blue-collar occupations compensated under the pay schedules provided in 2-18-313 and 2-18-315.

(3) The pay schedules provided in 2-18-313 and 2-18-315 must be implemented as follows:

(a) (i) The pay schedules provided for in 2-18-313 indicate the annual compensation for teachers employed under the authority of the department of corrections or the department of public health and human services for fiscal years 1998 and 1999.

(ii) The compensation of each teacher on July 1, 1997, is the same as it was on June 30, 1997.

(iii) On the first day of the first pay period that includes October 1 of each fiscal year, a teacher employed under the authority of the department of public health and human services or the department of corrections before October 1, 1994, shall advance one step on the appropriate pay schedule adopted in 2-18-313. A teacher hired after October 1, 1994, shall advance on the teacher's actual anniversary date.

(b) (i) The pay schedules provided in 2-18-315 indicate the maximum hourly compensation for fiscal years ending June 30, 1998, and June 30, 1999, for employees in apprentice trades and crafts and other blue-collar occupations recognized in the state blue-collar classification plan who are members of units that have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in each fiscal year is that amount corresponding to the grade occupied on the last day of the preceding fiscal year.

(4) (a) (i) A member of a bargaining unit may not receive a pay increase until the employer's collective bargaining representative receives written notice that the employee's bargaining unit has ratified a completely integrated collective bargaining agreement covering the biennium ending June 30, 1999.

(ii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by July 1, 1997, retroactivity to that date may be negotiated.

(iii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by July 1, 1997, members of the bargaining unit must continue to receive the compensation that they were receiving as of June 30, 1997, until an agreement is ratified.

(b) Methods of administration not inconsistent with the purpose of this part and necessary to properly implement the pay schedules and adjustments provided in 2-18-312, 2-18-313, 2-18-315, and this section may be provided for in collective bargaining agreements.

(5) The current wage or salary of an employee may not be reduced by the implementation of the pay schedules provided for in 2-18-312, 2-18-313, and 2-18-315.

(6) The department may authorize a separate pay schedule for medical doctors if the rates provided in 2-18-312 are not sufficient to attract and retain fully licensed and qualified physicians at the state institutions.

(7) The department may develop programs that enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. To the extent that the program applies to employees within a collective bargaining unit, it is a negotiable subject under 39-31-305.

(8) The department shall review the competitiveness of the compensation provided to all occupations under this part. If the department finds that substantial problems exist with recruitment and retention because of inadequate salaries when compared to competing employers, the department may establish criteria allowing an adjustment in pay or classification to mitigate the problems. To the extent that these adjustments apply to employees within a collective bargaining unit, the implementation of these adjustments is a negotiable subject under 39-31-305.

History: En. 59-916 by Sec. 2, Ch. 563, L. 1977; R.C.M. 1947, 59-916; amd. Sec. 4, Ch. 678, L. 1979; amd. Sec. 4, Ch. 421, L. 1981; amd. Sec. 8, Ch. 710, L. 1983; amd. Sec. 2, Ch. 740, L. 1985; amd. Sec. 21, Ch. 609, L. 1987; amd. Sec. 1, Ch. 621, L. 1987; amd. Sec. 3, Ch. 661, L. 1987; amd. Sec. 5, Ch. 660, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 3, Ch. 720, L. 1991; amd. Sec. 2, Ch. 640, L. 1993; amd. Sec. 6, Ch. 455, L. 1995; amd. Sec. 25, Ch. 546, L. 1995; amd. Sec. 12, Ch. 42, L. 1997; amd. Sec. 5, Ch. 417, L. 1997.

Compiler's Comments

1997 Amendments — Composite Section: Chapter 42 in (1)(c)(i), (3)(a)(i), and (3)(b)(ii) deleted reference to fiscal year 1996; in (2), (3), (4)(b), and (5) deleted reference to 2-18-314; deleted former (1)(c), (1)(d)(iii), and former (3)(a)(ii) that addressed pay calculations for 1995 and fiscal year 1996; in (2), after "teachers", deleted "liquor store occupations"; deleted former (3)(b) that referred to pay schedules provided in 2-18-314 and compensation of employees covered by those schedules; adjusted subsection references; and made minor changes in style. Amendment effective March 12, 1997.

Because certain amendments in Ch. 42 were intended to delete material no longer in effect because it related to former years and that material was used in Ch. 417 as a basis for Ch. 417 amendments, the material deleted in Ch. 42 was retained in this section.

Chapter 417 in (1)(c) substituted "1998" for "1996", substituted "employee is entitled" for "employee hired before July 1, 1995, is entitled", substituted "1997" for "1995", and at end deleted "plus, on the employee's anniversary date that occurs on or after September 30, 1995, the increases provided in subsection (1)(d), if applicable"; in (2)(d) substituted "1998" for "1996" and "1999" for "1997" and after "matrix" deleted "in subsection (1)(d)(ii)"; in (1)(d)(ii) substituted "The matrix for the target market ratios is as follows" for "As provided in subsection (1)(d)(i), the following matrix must be used to compare an employee's market ratio to the target market ratio that corresponds to the employee's grade level and completed years of uninterrupted state service"; in (1)(d)(iii), at beginning, deleted "If", substituted "1998 and "June 30, 1999" for "1996", after "June 30, 1999" deleted "the employee's market ratio is less than the target market ratio that corresponds to the employee's grade level and completed years of uninterrupted state service", and near end substituted "greater of" for "lesser of"; in (1)(d)(iii)(A), at end, inserted "not to exceed 4%"; inserted (1)(d)(iii)(B) relating to progression through target market ratios; in (1)(d)(iii)(C), at end, substituted "the employee's anniversary date, plus 1%" for "October 1, 1995, plus 5%"; deleted (1)(d)(iv) that read: "(iv) If, on the first day of the pay period that includes an employee's anniversary date during the fiscal year ending June 30, 1997, the employee's market ratio is less than the target market ratio that corresponds to the employee's grade level and completed years of uninterrupted state service, the employee's base salary must be increased to the lesser of:

(A) the market salary for the employee's grade multiplied by the target ratio that corresponds to the employee's grade level and completed years of uninterrupted state service; or

(B) the employee's base salary as it was on the last day of the pay period immediately preceding the pay period that includes October 1, 1996, plus 6%"; deleted former (1)(f) that read: "(f) an employee's base salary may not exceed the maximum salary for the employee's grade. The salary of an employee may not be reduced because of this provision"; deleted (1)(h) that read: "(h) An employee's market ratio, as it was on the last day of the pay period immediately preceding the pay period that includes October 1, 1996, may not be reduced as a result of the adjustment of the pay ranges provided in 2-18-312(2)"; in (2), after "teachers", deleted "liquor store occupations" and after "2-18-313" substituted "and" for "through"; in introductory clause of (3), after "2-18-313", substituted "and" for "through"; in (3)(a)(i) substituted "1998 and 1999" for "1996 and 1997"; in (3)(a)(ii), in two places, substituted "1997" for "1995"; in (3)(a)(iii), after "human services", inserted "or the department of corrections"; deleted former (3)(a)(iv), (3)(a)(v), and (3)(b) that read: "(iv) On the first day of the first full pay period during the month that includes the teacher's anniversary date, a teacher employed under the authority of the department of corrections shall advance one step on the appropriate pay schedule adopted in 2-18-313.

(v) On the first day of the first pay period that includes October 1 of each fiscal year, a teacher employed by the Montana school for the deaf and blind shall advance one step on the teacher pay matrix used by the school.

(b) (i) The pay schedules provided in 2-18-314 indicate the maximum hourly compensation for fiscal years ending June 30, 1996, and June 30, 1997, for those employees in liquor store occupations who have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year 1996 or 1997 is that amount corresponding to the grade occupied on the last day of the preceding fiscal year"; in (3)(b)(i) substituted "-1998" for "1996" and "1999" for "1997"; in (3)(b)(ii) substituted "each fiscal year" for "fiscal year 1996 or 1997"; in (4)(a)(i) substituted "1999" for "1997"; in (4)(a)(ii) and (4)(a)(iii), in three places, substituted "1997" for "1995"; in (4)(b) substituted "2-18-312, 2-18-313, 2-18-315" for "2-18-312 through 2-18-315"; in (5) substituted "2-18-312, 2-18-313, and 2-18-315" for "2-18-312 through 2-18-315"; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Compensation grievance, 2-18-1011.

2-18-304. Longevity allowance. (1) (a) In addition to the compensation provided for in 2-18-303, 2-18-312, 2-18-313, or 2-18-315, each employee who has completed 5 years of uninterrupted state service must receive 1.5% of the employee's base salary multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service.

(b) Service to the state is not interrupted by authorized leaves of absence.

(2) (a) For the purpose of determining years of service under this section, an employee must be credited with 1 year of service for each period of:

(i) 2,080 hours of service following the employee's date of employment; an employee must be credited with 80 hours of service for each biweekly pay period in which the employee is in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in the pay period; or

(ii) 12 uninterrupted calendar months following the employee's date of employment in which the employee was in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in any month. An employee of a school at a state institution or the university system must be credited with 1 year of service if the employee is employed for an entire academic year.

(b) State agencies, other than the university system and a school at a state institution, shall use the method provided in subsection (2)(a)(i) to calculate years of service under this section.

(3) For the purposes of calculating longevity, employment as a short-term worker does not apply toward years of service.

History: **En. 59-920 by Sec. 6, Ch. 563, L. 1977; R.C.M. 1947, 59-920; amd. Sec. 5, Ch. 678, L. 1979; amd. Sec. 9, Ch. 710, L. 1983; amd. Sec. 1, Ch. 593, L. 1985; amd. Sec. 4, Ch. 661, L. 1987; amd. Sec. 4, Ch. 720, L. 1991; amd. Sec. 7, Ch. 455, L. 1995; amd. Sec. 13, Ch. 42, L. 1997; amd. Sec. 6, Ch. 339, L. 1997; amd. Sec. 6, Ch. 417, L. 1997.**

Compiler's Comments

1997 Amendments: Chapter 42 deleted (1)(a)(i) that applied to longevity allowances calculated in 1995; and in (1)(a) deleted reference to 2-18-314. Amendment effective March 12, 1997.

Chapter 339 inserted (3) providing that for the purposes of calculating longevity, employment as a short-term worker does not apply toward years of service. Amendment effective July 1, 1997.

Chapter 417 deleted (1)(a)(i) that read: "(i) Effective July 1, 1995, through the last day of the pay period immediately preceding the pay period that includes October 1, 1995, in addition to the compensation provided for in 2-18-303, 2-18-312, 2-18-313, 2-18-314, or 2-18-315, each employee who has completed 5 years of uninterrupted state service must receive 9/10 of 1% of the employee's base salary multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service"; and in (1)(a), at beginning, deleted "Effective on the first day of the pay period that includes October 1, 1995" and after "2-18-313" deleted "2-18-314". Amendment effective July 1, 1997.

2-18-305. Repealed. Sec. 21, Ch. 455, L. 1995.

History: **En. 59-919 by Sec. 5, Ch. 563, L. 1977; R.C.M. 1947, 59-919; amd. Sec. 6, Ch. 678, L. 1979; amd. Sec. 10, Ch. 710, L. 1983; amd. Sec. 5, Ch. 661, L. 1987; amd. Sec. 5, Ch. 720, L. 1991; amd. Sec. 3, Ch. 640, L. 1993.**

2-18-306. Determination of weekly or hourly pay rate. When the monthly or annual salary rate payable to an officer or employee of the state has been set by law or otherwise, notwithstanding any other provision of law, the weekly or hourly rate of pay shall be determined by dividing the annual salary by 52 weeks or 2,080 hours.

History: **En. Sec. 9, Ch. 95, L. 1969; R.C.M. 1947, 25-507.9.**

2-18-307. Repealed. Sec. 17, Ch. 678, L. 1979.

History: **En. 59-921 by Sec. 7, Ch. 563, L. 1977; R.C.M. 1947, 59-921.**

2-18-308 through 2-18-310 reserved.

2-18-311. Repealed. Sec. 11, Ch. 661, L. 1987.

History: **En. 59-917 by Sec. 3, Ch. 563, L. 1977; R.C.M. 1947, 59-917; amd. Sec. 7, Ch. 678, L. 1979; amd. Sec. 5, Ch. 421, L. 1981; amd. Sec. 1, Ch. 710, L. 1983; amd. Sec. 3, Ch. 740, L. 1985.**

2-18-312. Statewide pay schedules for fiscal years 1998 and 1999. (1) The statewide classification pay schedule for the period beginning on the first day of the first full pay period in fiscal year 1998, is as follows:

Annual Hours — 2080 Note: Does Not Include Insurance
Pay Matrix — State Matrix Type — Annual
Pay Range: Entry Salary to Market Salary

GRADE	ENTRY SALARY	MARKET SALARY
1	8,986	10,571
2	9,679	11,413
3	10,424	12,323
4	11,234	13,312
5	12,140	14,419
6	13,118	15,618
7	14,171	16,910
8	15,360	18,372

9	16,630	19,941
10	18,039	21,680
11	19,570	23,578
12	21,269	25,687
13	23,112	27,980
14	25,151	30,523
15	27,399	33,331
16	29,903	36,469
17	32,698	39,974
18	35,779	43,848
19	39,233	48,198
20	43,086	53,060
21	47,367	58,478
22	52,149	64,541
23	57,543	71,393
24	63,601	79,104
25	70,302	87,657

(2) Effective on the first day of the first full pay period in fiscal year 1999, the statewide classification pay schedule is as follows:

Annual Hours — 2080 Note: Does Not Include Insurance
Pay Matrix — State Matrix Type — Annual
Pay Range: Entry Salary to Market Salary

GRADE	ENTRY SALARY	MARKET SALARY
1	9,076	10,677
2	9,776	11,527
3	10,528	12,446
4	11,346	13,445
5	12,261	14,563
6	13,249	15,774
7	14,313	17,079
8	15,514	18,556
9	16,796	20,140
10	18,219	21,897
11	19,766	23,814
12	21,482	25,944
13	23,343	28,260
14	25,403	30,828
15	27,673	33,664
16	30,202	36,834
17	33,025	40,374
18	36,137	44,286
19	39,625	48,680
20	43,517	53,591
21	47,841	59,063
22	52,670	65,186
23	58,118	72,107

24	64,237	79,895
25	71,005	88,534

History: En. 59-918 by Sec. 4, Ch. 563, L. 1977; R.C.M. 1947, 59-918; amd. Sec. 8, Ch. 678, L. 1979; amd. Sec. 5, Ch. 421, L. 1981 (Executive Order No. 7-81); amd. Sec. 2, Ch. 710, L. 1983; amd. Sec. 4, Ch. 740, L. 1985; rep. Sec. 12, Ch. 6, Sp. L. June 1986; re-en. Sec. 11, Ch. 6, Sp. L. June 1986; amd. Sec. 6, Ch. 661, L. 1987; amd. Sec. 6, Ch. 660, L. 1989; amd. Sec. 6, Ch. 720, L. 1991; amd. Sec. 4, Ch. 640, L. 1993; amd. Sec. 8, Ch. 455, L. 1995; amd. Sec. 7, Ch. 417, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 417 in (1) substituted "beginning on the first day of the first full pay period in fiscal year 1998" for "from July 1, 1995, until the first day of the pay period that includes October 1, 1996" and substituted pay schedule for fiscal year 1998 for July 1995 pay schedule (see 1997 Session Law for text); and in (2) substituted "first full pay period in fiscal year 1999" for "pay period that includes October 1, 1996" and substituted pay schedule for fiscal year 1999 for October 1996 pay schedule (see 1997 Session Law for text). Amendment effective July 1, 1997.

2-18-313. Teachers' pay schedules. (1) The pay schedule for teachers for the period that includes October 1, 1997, until the first day of the pay period that includes October 1, 1998, is as follows:

Annual Hours — 2080
Term — Twelve Months

Note: Does Not Include Insurance
Matrix Type — Annual

Education Level

STEP	BA	BA+1	BA+2	BA+3	MA	MA+1
1	23,642	24,351	25,082	25,834	26,609	27,407
2	24,351	25,082	25,834	26,609	27,407	28,230
3	25,082	25,834	26,609	27,407	28,230	29,077
4	25,834	26,609	27,407	28,230	29,077	29,949
5	26,609	27,407	28,230	29,077	29,949	30,847
6	27,407	28,230	29,077	29,949	30,847	31,773
7	28,230	29,077	29,949	30,847	31,773	32,726
8	29,077	29,949	30,847	31,773	32,726	33,708
9	29,949	30,847	31,773	32,726	33,708	34,719
10	30,847	31,773	32,726	33,708	34,719	35,761
11	31,773	32,726	33,708	34,719	35,761	36,833
12	32,726	33,708	34,719	35,761	36,833	37,938

(2) Effective on the first day of the pay period that includes October 1, 1998, the pay schedule for teachers is as follows:

Annual Hours — 2080
Term — Twelve Months

Note: Does Not Include Insurance
Matrix Type — Annual

Education Level

STEP	BA	BA+1	BA+2	BA+3	MA	MA+1
1	23,642	24,351	25,082	25,834	26,609	27,407
2	24,351	25,082	25,834	26,609	27,407	28,230
3	25,082	25,834	26,609	27,407	28,230	29,077
4	25,834	26,609	27,407	28,230	29,077	29,949

5	26,609	27,407	28,230	29,077	29,949	30,847
6	27,407	28,230	29,077	29,949	30,847	31,773
7	28,230	29,077	29,949	30,847	31,773	32,726
8	29,077	29,949	30,847	31,773	32,726	33,708
9	29,949	30,847	31,773	32,726	33,708	34,719
10	30,847	31,773	32,726	33,708	34,719	35,761
11	31,773	32,726	33,708	34,719	35,761	36,833
12	32,726	33,708	34,719	35,761	36,833	37,938
13	33,708	34,719	35,761	36,833	37,938	39,077

History: En. Sec. 9, Ch. 678, L. 1979; amd. Sec. 5, Ch. 421, L. 1981 (Executive Order No. 7-81); amd. Sec. 3, Ch. 710, L. 1983; amd. Sec. 5, Ch. 740, L. 1985; amd. Sec. 2, Ch. 621, L. 1987; amd. Sec. 7, Ch. 660, L. 1989; amd. Sec. 7, Ch. 720, L. 1991; amd. Sec. 5, Ch. 640, L. 1993; amd. Sec. 9, Ch. 455, L. 1995; amd. Sec. 8, Ch. 417, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 417 in (1) substituted "1997" for "1995" and "1998" for "1996" and substituted 1997 pay schedule for 1995 pay schedule (see 1997 Session Law for text); and in (2) substituted "1998" for "1996" and substituted 1998 pay schedule for 1996 pay schedule (see 1997 Session Law for text). Amendment effective July 1, 1997.

2-18-314. Repealed. Sec. 315, Ch. 42, L. 1997; sec. 18, Ch. 417, L. 1997.

History: En. Sec. 10, Ch. 678, L. 1979; amd. Sec. 5, Ch. 421, L. 1981 (Executive Order No. 7-81); amd. Sec. 4, Ch. 710, L. 1983; amd. Sec. 6, Ch. 740, L. 1985; amd. Sec. 8, Ch. 661, L. 1987; amd. Sec. 8, Ch. 660, L. 1989; amd. Sec. 8, Ch. 720, L. 1991; amd. Sec. 6, Ch. 640, L. 1993; amd. Sec. 10, Ch. 455, L. 1995.

2-18-315. Blue-collar pay schedules. (1) The pay schedule for blue-collar workers for the period from July 1, 1997, until the first day of the pay period that includes October 1997 is as follows:

Annual Hours — 2080
Note: Does Not Include Insurance
Pay Matrix — Blue-Collar
Matrix Type — Hourly

Grade	$/Hour
B1	9.995
B2	10.395
B3	10.795
B4	11.195
B5	11.595
B6	11.995
B7	12.395
B8	12.795
B9	13.195
B10	13.595
B11	13.995
B12	14.395
B00	14.795

(2) Effective on the first day of the pay period that includes October 1, 1997, until the first day of the pay period that includes October 1998, the pay schedule for blue-collar workers is as follows:

Annual Hours — 2080 Note: Does Not Include Insurance
Pay Matrix — Blue-Collar Matrix Type — Hourly

Grade	$/Hour
B1	10.245
B2	10.645
B3	11.045
B4	11.445
B5	11.845
B6	12.245
B7	12.645
B8	13.045
B9	13.445
B10	13.845
B11	14.245
B12	14.645
B00	15.045

(3) Effective on the first day of the pay period that includes October 1, 1998, the pay schedule for blue-collar workers is as follows:

Annual Hours — 2080 Note: Does Not Include Insurance
Pay Matrix — Blue-Collar Matrix Type — Hourly

Grade	$/Hour
B1	10.515
B2	10.915
B3	11.315
B4	11.715
B5	12.115
B6	12.515
B7	12.915
B8	13.315
B9	13.715
B10	14.115
B11	14.515
B12	14.915
B00	15.315

History: En. Sec. 11, Ch. 678, L. 1979; amd. Sec. 5, Ch. 421, L. 1981 (Executive Order No. 7-81); amd. Sec. 5, Ch. 710, L. 1983; amd. Sec. 7, Ch. 740, L. 1985; amd. Sec. 9, Ch. 661, L. 1987; amd. Sec. 9, Ch. 660, L. 1989; amd. Sec. 9, Ch. 720, L. 1991; amd. Sec. 7, Ch. 640, L. 1993; amd. Sec. 11, Ch. 455, L. 1995; amd. Sec. 9, Ch. 417, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 417 in (1) substituted "July 1, 1997, until the first day of the pay period that includes October 1997" for "July 1, 1995, through September 29, 1995" and substituted 1997 pay schedule for 1995 pay schedule (see 1997 Session Law for text); in (2) substituted "on the first day of the pay period that includes October 1, 1997" for "September 30, 1995", substituted "1998" for "1996", and substituted 1997 pay schedule for 1995 pay schedule (see 1997 Session Law for text); and in (3) substituted "1998" for "1996" and substituted 1998 pay schedule for 1996 pay schedule (see 1997 Session Law for text). Amendment effective July 1, 1997.

2-18-316 through 2-18-318 reserved.

2-18-319. Terminated. Sec. 5, Ch. 49, L. 1995.

History: En. Sec. 1, Ch. 49, L. 1995.

2-18-320. Terminated. Sec. 5, Ch. 49, L. 1995.

History: En. Sec. 2, Ch. 49, L. 1995.

Part 4

Payroll Systems

2-18-401. Central payroll system — department to provide for inclusion of agencies. The department of administration shall install and operate a uniform state central payroll system for all state agencies, including units of the Montana university system. The department may provide for the orderly inclusion of state agencies into the system and may make exceptions from the operation of the system for periods that it determines necessary. The department shall adopt rules to implement the state central payroll system.

History: En. Sec. 1, Ch. 95, L. 1969; amd. Sec. 1, Ch. 51, L. 1977; R.C.M. 1947, 25-507.1(part); amd. Sec. 1, Ch. 592, L. 1989; amd. Sec. 1, Ch. 188, L. 1993; amd. Sec. 2, Ch. 84, L. 1995; amd. Sec. 2, Ch. 308, L. 1995.

2-18-402. Payroll agency fund — department to determine disbursements and transfers. (1) A fund in the agency fund type of the state treasury is created, to be known as the state payroll agency fund. The fund may be utilized for the payment of compensation to officers and employees of the state and all amounts withheld from compensation, pursuant to law.

(2) The amount to be disbursed from the state payroll agency fund at any time must be determined by the department of administration and, on order of the department, must be transferred from the fund, account, and appropriation properly chargeable to the state payroll agency fund.

History: En. Sec. 8, Ch. 95, L. 1969; R.C.M. 1947, 25-507.8; amd. Sec. 2, Ch. 281, L. 1983; amd. Sec. 2, Ch. 188, L. 1993.

Cross-References

Treasury funds and accounts, Title 17, ch. 2, part 1.

2-18-403. Service charges. The department of administration may provide for a system of charges for services rendered by the state central payroll system to any department or agency of the state. Funds collected under this section must be deposited to the credit of an internal services fund account and expended for the purpose of paying the expenses incurred by the state central payroll system.

History: En. Sec. 10, Ch. 95, L. 1969; R.C.M. 1947, 25-507.10; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 3, Ch. 188, L. 1993; amd. Sec. 3, Ch. 84, L. 1995.

2-18-404. Payroll roster — changes certified by appointing powers. (1) The department of administration shall establish and maintain a payroll roster of all persons employed by every state agency and may establish and maintain a roster of all established positions. The payroll roster must include exempt employees and may include emergency appointees or the equivalent.

(2) Each appointing power shall correctly and promptly certify to the department all changes, modifications, additions, and deletions to the payroll

roster in compliance with all applicable merit service, fiscal, and other pertinent laws and rules.

(3) The state central payroll system must disburse or otherwise act in reliance upon all payroll roster certifications and attendance reports certified to the department by the respective appointing powers.

History: En. Secs. 4, 5, Ch. 95, L. 1969; R.C.M. 1947, 25-507.4, 25-507.5; amd. Sec. 3, Ch. 239, L. 1989; amd. Sec. 4, Ch. 188, L. 1993.

2-18-405. Payroll based on actual, end-of-period figures — pay date — change of payroll periods. (1) All state payroll systems must be based upon actual payroll figures submitted after the end of the payroll period and may not be based upon estimated payroll.

(2) All state payroll systems must provide for the fixing of payroll periods and designated days on which salaried employees are paid for the preceding payroll period. The pay date must be uniform for all employees of each state agency employed in the same geographic area, and payroll warrants must be distributed or mailed and electronic funds transfers initiated within 10 business days following the close of the payroll period.

(3) The payroll period of employees of a state agency may not be changed by inclusion of the agency into the state payroll system or by any revision or modification of the system unless notice of the proposed change has been given to each employee who will be affected by the change in the form and manner prescribed by the department of administration not less than 60 days prior to the effective date of the change.

History: (1), (2)En. Secs. 1, 2, Ch. 95, L. 1969; amd. Secs. 1, 2, Ch. 51, L. 1977; Secs. 25-507.1, 25-507.2, R.C.M. 1947; (3)En. Sec. 3, Ch. 95, L. 1969; Sec. 25-507.3, R.C.M. 1947; R.C.M. 1947, 25-507.1(part), 25-507.2, 25-507.3; amd. Sec. 29, Ch. 184, L. 1979; amd. Sec. 2, Ch. 101, L. 1989; amd. Sec. 5, Ch. 188, L. 1993.

2-18-406 through 2-18-410 reserved.

2-18-411. Lost warrants — duplicate. (1) Upon receipt of proof satisfactory to the treasurer that a payroll warrant issued by the state treasurer has been lost or destroyed prior to its delivery to the employee to whom it is payable, the state treasurer shall, upon certification by the payee's appointing power, issue a duplicate warrant in payment of the same amount without requiring a bond from the payee. Any loss incurred in connection with the warrant must be charged against the account from which the payment was derived.

(2) A payroll warrant is considered to have been lost if it has been sent to the payee but not received by the payee within a reasonable time, consistent with the policy of prompt payment of employees, or if it has been sent to a state officer or employee for delivery to the payee or for forwarding to another state officer or employee for delivery and has not been received within a reasonable time.

History: En. Sec. 6, Ch. 95, L. 1969; R.C.M. 1947, 25-507.6; amd. Sec. 1, Ch. 325, L. 1995.

Cross-References

Issuance of duplicate warrants, 17-8-306.

2-18-412. Designation of person to receive decedent's warrants — reissuance. A person employed by the state may file with the person's appointing power a designation of a person who, notwithstanding any other provision of law, shall, on the death of the employee, be entitled to receive all warrants that would have been payable to the decedent had the employee survived. The employee may change the designation from time to time. A person designated shall claim the warrants from the state treasurer and on sufficient proof of identity, the treasurer shall reissue the warrant in the name of the designated person and deliver the warrant to the designated person.

History: En. Sec. 7, Ch. 95, L. 1969; R.C.M. 1947, 25-507.7; amd. Sec. 2, Ch. 325, L. 1995.

Cross-References

County employees designation, 7-4-2521.

City employees designation, 7-4-4211.

Part 5

Travel, Meals, and Lodging

2-18-501. Meals, lodging, and transportation of persons in state service. All elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees must be reimbursed for meals and lodging while away from the person's designated headquarters and engaged in official state business in accordance with the following provisions:

(1) Except as provided under subsection (3), for travel within the state of Montana, lodging must be authorized at the actual cost of lodging, not exceeding $35 per day, and taxes on the allowable cost of lodging, except as provided in subsection (3), plus $5 for the morning meal, $6 for the midday meal, and $12 for the evening meal. All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(2) Except as provided in subsection (3), for travel outside the state of Montana and within the United States, the following provisions apply:

(a) Lodging must be reimbursed at actual cost, not to exceed the prescribed maximum standard federal rate per day for the location involved plus taxes on the allowable cost.

(b) Meal reimbursement may not exceed the prescribed maximum standard federal rate per meal.

(3) The department shall designate the locations and circumstances under which the governor, other elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees may be authorized the actual cost of lodging when the actual cost exceeds the maximum established in subsection (1) or (2)(a).

(4) For travel to a foreign country, the following provisions apply:

(a) All elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees must be reimbursed for the cost of meals and lodging within the rates established by the department of administration when traveling in the normal course of their duties to designated areas. The department shall use the United States department of state maximum travel per diem allowances for foreign areas in establishing the rates.

(b) All claims for lodging reimbursement allowed under this subsection (4) must be documented by an appropriate receipt.

(5) When other than commercial, nonreceiptable lodging facilities are used by a state official or employee while conducting official state business in a travel status, the amount of $12 is authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in subsection (1)(a) or (2)(a). However, when overnight accommodations are provided at the expense of a government entity, reimbursement may not be claimed for lodging.

(6) The actual cost of reasonable transportation expenses and other necessary business expenses incurred by a state official or employee while in an official travel status is subject to reimbursement.

(7) The provisions of this section may not be construed as affecting the validity of 5-2-301.

(8) The department of administration shall establish policies necessary to effectively administer this section for state government.

(9) All commercial air travel must be by the least expensive class service available.

History: En. Sec. 2, Ch. 66, L. 1955; amd. Sec. 1, Ch. 207, L. 1957; amd. Sec. 1, Ch. 108, L. 1961; amd. Sec. 1, Ch. 116, L. 1963; amd. Sec. 1, Ch. 48, L. 1967; amd. Sec. 1, Ch. 273, L. 1969; amd. Sec. 1, Ch. 10, L. 1971; amd. Ch. 295, L. 1971; amd. Sec. 3, Ch. 495, L. 1973; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 1, Ch. 439, L. 1975; amd. Sec. 1, Ch. 483, L. 1977; R.C.M. 1947, 59-538; amd. Sec. 1, Ch. 643, L. 1979; amd. Sec. 1, Ch. 338, L. 1981; amd. Sec. 1, Ch. 582, L. 1981; amd. Sec. 13, Ch. 575, L. 1981; amd. Sec. 1, Ch. 646, L. 1983; amd. Sec. 1, Ch. 399, L. 1987; amd. Sec. 5, Ch. 83, L. 1989; amd. Sec. 1, Ch. 207, L. 1989; amd. Sec. 1, Ch. 561, L. 1991; amd. Sec. 1, Ch. 439, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 439 at beginning of introductory clause substituted "All elected state officials" for "Every elected official"; in (1), at beginning, inserted exception clause, after "state of Montana" substituted "lodging must be authorized at" for "the following provisions apply:

(a) The governor shall be authorized actual and necessary expenses not to exceed $55 per day.

(b) All other elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees shall be authorized", and increased allowance for lodging from $30 per day to $35, for morning meal from $3.50 to $5, for midday meal from $4 to $6, and for evening meal from $8 to $12; at beginning of (2) substituted introductory clause and (2)(a) and (2)(b) allowing reimbursement for lodging and meals for out-of-state travel at actual cost, up to federal maximum, for "For travel out of the state of Montana, the following provisions apply:

(a) The governor shall be authorized the actual cost of lodging in addition to a meal allowance not to exceed $30 per day"; in (3), at beginning, substituted "The department shall designate the locations and circumstances under which the governor" for "All" and substituted "may be authorized the actual cost of lodging when the actual cost exceeds the maximum established in subsection (1) or (2)(a)" for "shall be authorized the actual cost of lodging, not exceeding $50 per day, except as provided in subsection (3), plus $5 for the morning meal, $6.50 for the midday meal, and $12 for the evening meal. All claims for the lodging expense reimbursement allowed under this subsection must be documented by an appropriate receipt"; deleted former (3) that read: "(3) All other elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees shall be authorized the actual cost of lodging when traveling in the normal course of their duties to certain designated areas. The department of administration shall designate those areas where the actual cost of lodging shall be reimbursed"; in (4)(b) substituted "claims for lodging reimbursement" for "claims for meals and lodging reimbursement"; in (5), near beginning of first sentence, substituted "a state official or employee" for "a state employee" and at end substituted "(1)(a) or (2)(a)" for "(1)(b) or (2)(b)"; in (8) substituted "establish policies" for "prescribe rules"; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

State agencies to account for in-state lodging expenditures — allocation of lodging facility use tax to state general fund, 15-65-131.

Government officer as witness — no per diem for criminal proceeding, 26-2-501.

2-18-502. Computation of meal allowance. (1) Except as provided in subsections (2) and (4), an employee is eligible for the meal allowance provided in 2-18-501, only if the employee is in a travel status for more than 3 continuous hours during the following hours:

(a) for the morning meal allowance, between the hours of 12:01 a.m. and 10 a.m.;

(b) for the midday meal allowance, between the hours of 10:01 a.m. and 3 p.m.; and

(c) for the evening meal allowance, between the hours of 3:01 p.m. and 12 midnight.

(2) An eligible employee may receive:

(a) only one of the three meal allowances provided, if the travel was performed within the employee's assigned travel shift; or

(b) a maximum of two meal allowances if the travel begins before or was completed after the employee's assigned travel shift and the travel did not exceed 24 hours.

(3) "Travel shift" is that period of time beginning 1 hour before and terminating 1 hour after the employee's normally assigned work shift.

(4) An appointed member of a state board, commission, or council or a member of a legislative subcommittee or select or interim committee is entitled to a midday meal allowance on a day the individual is attending a meeting of the board, commission, council, or committee, regardless of proximity of the meeting place to the individual's residence or headquarters. This subsection does not apply to a member of a legislative committee during a legislative session.

(5) The department of administration shall prescribe policies necessary to effectively administer this section for state government.

History: En. Sec. 3, Ch. 66, L. 1955; amd. Sec. 4, Ch. 495, L. 1973; amd. Sec. 1, Ch. 213, L. 1974; amd. Sec. 2, Ch. 439, L. 1975; amd. Sec. 2, Ch. 483, L. 1977; R.C.M. 1947, 59-539; amd. Sec. 1, Ch. 123, L. 1983; amd. Sec. 2, Ch. 439, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 439 in (1), near beginning, substituted "subsections (2) and (4)" for "subsection (3)", after "2-18-501" substituted "only if the employee is in a travel status" for "an employee must have been in a travel status", and at end substituted "during the following hours" for "If eligible, an employee receives"; in (1)(a), (1)(b), and (1)(c), after "allowance", deleted "if in a travel status"; in (2) inserted "An eligible employee may receive"; in (5) substituted "policies" for "rules"; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

2-18-503. Mileage — allowance. (1) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds when using their own automobiles in the performance of official duties are entitled to collect mileage for the distance actually traveled by automobile and no more unless otherwise specifically provided by law.

(2) When the individual is authorized to operate a privately owned vehicle even though a government-owned or leased vehicle is available, a rate of 3 cents

less per mile than the mileage rate allowed by the United States internal revenue service for the preceding year must be paid.

(3) When a privately owned vehicle is used because a government-owned or leased vehicle is not available or because the use is in the best interest of the governmental entity, a rate equal to the mileage allotment allowed by the United States internal revenue service for the preceding year must be paid for the first 1,000 miles and 3 cents less per mile for all additional miles traveled within a given calendar month.

(4) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds, when using their own airplanes in the performance of official duties, are entitled to collect mileage for the nautical air miles actually traveled at a rate of twice the mileage allotment for automobile travel and no more unless specifically provided by law.

(5) This section does not alter 5-2-301.

(6) The department of administration shall prescribe policies necessary for the effective administration of this section for state government. The Montana Administrative Procedure Act, Title 2, chapter 4, does not apply to policies prescribed to administer this part.

History: En. Sec. 4590, Pol. C. 1895; re-en. Sec. 3111, Rev. C. 1907; re-en. Sec. 4884, R.C.M. 1921; amd. Sec. 1, Ch. 16, L. 1933; re-en. Sec. 4884, R.C.M. 1935; amd. Sec. 1, Ch. 121, L. 1941; amd. Sec. 1, Ch. 201, L. 1947; amd. Sec. 1, Ch. 93, L. 1949; amd. Sec. 1, Ch. 124, L. 1951; amd. Sec. 1, Ch. 106, L. 1961; amd. Sec. 1, Ch. 123, L. 1963; amd. Sec. 2, Ch. 48, L. 1967; amd. Sec. 1, Ch. 495, L. 1973; amd. Sec. 9, Ch. 355, L. 1974; amd. Sec. 3, Ch. 439, L. 1975; amd. Sec. 1, Ch. 532, L. 1975; amd. Sec. 1, Ch. 453, L. 1977; R.C.M. 1947, 59-801; amd. Sec. 1, Ch. 622, L. 1979; amd. Sec. 3, Ch. 439, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 439 in (6), in first sentence, substituted "policies" for "rules" and inserted second sentence exempting policies from Montana Administrative Procedure Act; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

2-18-504. Mileage computed by shortest traveled route. Wherever mileage is allowed to any sheriff or other officer, juror, witness, or other person under any law of Montana, the same shall be computed according to the shortest traveled route, when such shortest route is passable.

History: En. Sec. 1, Ch. 7, L. 1919; re-en. Sec. 4901, R.C.M. 1921; re-en. Sec. 4901, R.C.M. 1935; R.C.M. 1947, 25-217.

2-18-505 through 2-18-510 reserved.

2-18-511. Claim for expenses. Every such person so engaged shall periodically submit a claim containing a schedule of expenses and amounts claimed for said period. Said schedule shall show in what capacity such person was engaged each day while away from the department in which said daily duties arose and shall show expense items of each day in detail, such as the amount of per diem allowance claimed, transportation fare, mileage, and other such items.

History: En. Sec. 4, Ch. 66, L. 1955; amd. Sec. 26, Ch. 97, L. 1961; R.C.M. 1947, 59-540.

2-18-512. Prohibition on travel expenses for conventions — exception. Hereafter, no state officer or employee of the state shall receive payment from any public funds for traveling expenses or other expenses of any sort or kind for attendance upon any convention, meeting, or other gathering of public officers except for attendance upon such convention, meeting, or other gatherings as said officer or employee may by virtue of his office find it necessary to attend.

History: En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; R.C.M. 1947, 25-508(part).

Part 6

Leave Time

Part Cross-References

Leave for military training program, 10-1-604.

Compensation of state employee for time spent answering subpoena, 26-2-515.

2-18-601. Definitions. For the purpose of this part, except 2-18-620, the following definitions apply:

(1) "Agency" means any legally constituted department, board, or commission of state, county, or city government or any political subdivision thereof.

(2) "Break in service" means a period of time in excess of 5 working days when the person is not employed and that severs continuous employment.

(3) "Continuous employment" means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

(4) "Employee" means any person employed by an agency except elected state, county, and city officials, schoolteachers, and persons contracted as independent contractors or hired under personal services contracts.

(5) "Full-time employee" means an employee who normally works 40 hours a week.

(6) "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216 or 20-1-305, except Sundays.

(7) "Part-time employee" means an employee who normally works less than 40 hours a week.

(8) "Permanent employee" means a permanent employee as defined in 2-18-101.

(9) "Seasonal employee" means a seasonal employee as defined in 2-18-101.

(10) "Short-term worker" means a short-term worker as defined in 2-18-101.

(11) "Sick leave" means a leave of absence with pay for a sickness suffered by an employee or a member of the employee's immediate family or for a permanent state employee who is eligible for parental leave under the provisions of 2-18-606.

(12) "Temporary employee" means a temporary employee as defined in 2-18-101.

(13) "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service.

(14) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer.

History: En. Sec. 1, Ch. 476, L. 1973; R.C.M. 1947, 59-1007.1; amd. Sec. 30, Ch. 184, L. 1979; amd. Sec. 3, Ch. 568, L. 1979; amd. Sec. 1, Ch. 178, L. 1981; amd. Sec. 1, Ch. 260, L. 1991; amd. Sec. 2, Ch. 756, L. 1991; amd. Sec. 7, Ch. 339, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 339 inserted definition of short-term worker; deleted definition of sick pay plan (see 1997 Session Law for former text); in definition of permanent employee substituted "means a permanent employee as defined in 2-18-101" for "means an employee who is assigned to a position designated as permanent on the appropriate list of authorized positions referenced in 2-18-206 and approved as such in the biennium budget"; in definition of seasonal employee substituted "means a seasonal employee as defined in 2-18-101" for "means an employee assigned to a position designated as seasonal on the appropriate agency list of authorized positions referenced in 2-18-206 and for which the agency has a permanent need but which is interrupted by the seasonal nature of the assignment"; in definition of temporary employee substituted "means a temporary employee as defined in 2-18-101" for "means an employee assigned to a position designated as temporary on the appropriate agency list of authorized positions referenced in 2-18-206, created for a definite period of time not to exceed 9 months"; and made minor changes in style. Amendment effective July 1, 1997.

2-18-602. Repealed. Sec. 12, Ch. 568, L. 1979.

History: En. Sec. 1134, Pol. C. 1895; re-en. Sec. 436, Rev. C. 1907; re-en. Sec. 453, R.C.M. 1921; Cal. Pol C. Sec. 1030; amd. Sec. 1, Ch. 5, L. 1931; re-en. Sec. 453, R.C.M. 1935; amd. Sec. 1, Ch. 22, L. 1951; amd. Sec. 1, Ch. 253, L. 1957; amd. Sec. 1, Ch. 2, L. 1961; R.C.M. 1947, 59-510(1)(part).

2-18-603. Holidays — observance when falling on employee's day off. (1) (a) A full-time employee who is scheduled for a day off on a day that is observed as a legal holiday, except Sundays, is entitled to receive a day off with pay either on the day preceding the holiday or on another day following the holiday in the same pay period or as scheduled by the employee and the employee's supervisor, whichever allows a day off in addition to the employee's regularly scheduled days off, provided the employee is in a pay status on the employee's last regularly scheduled working day immediately before the holiday or on the employee's first regularly scheduled working day immediately after the holiday.

(b) Part-time employees receive pay for the holiday on a prorated basis according to rules adopted by the department of administration or appropriate administrative officer under 2-18-604.

(c) A short-term worker may not receive holiday pay.

(2) For purposes of this section, the term "employee" does not include nonteaching school district employees.

History: En. Sec. 1, Ch. 108, L. 1971; R.C.M. 1947, 59-1009; amd. Sec. 4, Ch. 568, L. 1979; amd. Sec. 1, Ch. 312, L. 1981; amd. Sec. 8, Ch. 339, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 339 inserted (1)(c) providing that a short-term worker may not receive holiday pay; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Legal holidays, 1-1-216.

2-18-604. Administration of rules. The department of administration or the administrative officer of any county, city, or political subdivision is responsible for the proper administration of the employee annual, sick, or military leave provisions and the jury duty provisions found in this part and shall promulgate rules necessary to achieve the uniform administration of these provisions and to prevent the abuse thereof. When promulgated, the rules are effective as to all employees of the state or any county, city, or political subdivision thereof.

History: En. Sec. 10, Ch. 568, L. 1979.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Job-sharing positions, 2-18-107.

2-18-605. Repealed. Sec. 13, Ch. 339, L. 1997.

History: En. Sec. 2, Ch. 178, L. 1981.

2-18-606. Parental leave for state employees. (1) The department of administration shall develop a parental leave policy for permanent state employees. The policy must permit an employee to take a reasonable leave of absence and permit the employee to use sick leave immediately following the birth or placement of a child for a period not to exceed 15 working days if:

(a) the employee is adopting a child; or

(b) the employee is a birth father.

(2) As used in this section, "placement" means placement for adoption as defined in 33-22-130.

(3) A state agency that is not subject to the provisions of the Family and Medical Leave Act of 1993, 29 U.S.C. 2601 through 2654, may extend the provisions of that act to the employees of the agency.

History: En. Sec. 1, Ch. 756, L. 1991; amd. Sec. 1, Ch. 2, L. 1997; amd. Sec. 158, Ch. 480, L. 1997.

Compiler's Comments

1997 Amendments: Chapter 2 inserted (3) allowing application of the Family and Medical Leave Act of 1993; and made minor changes in style. Amendment effective January 27, 1997.

Chapter 480 at end of (2) substituted "33-22-130" for "40-8-103".

Applicability: Section 173, Ch. 480, L. 1997 provided: "(1) [Sections 1 through 156] [Title 42, chapters 1 through 8] apply to proceedings commenced on or after October 1, 1997.

(2) A petition for adoption filed prior to October 1, 1997, is governed by the law in effect at the time the petition was filed.

(3) The putative father registry requirements apply to children born on or after October 1, 1997."

Cross-References

Maternity leave and job reinstatement, 49-2-310, 49-2-311.

2-18-607 through 2-18-610 reserved.

2-18-611. Annual vacation leave. (1) Each permanent full-time employee shall earn annual vacation leave credits from the first day of employment. Vacation leave credits earned must be credited at the end of each pay period. However, employees are not entitled to any vacation leave with pay until they have been continuously employed for a period of 6 calendar months.

(2) Seasonal employees earn vacation credits. However, seasonal employees must be employed for 6 qualifying months before they may use the vacation credits. In order to qualify, seasonal employees shall immediately report back for work when operations resume in order to avoid a break in service.

(3) Permanent part-time employees are entitled to prorated annual vacation benefits if they have worked the qualifying period.

(4) An employee may not accrue annual vacation leave credits while in a leave-without-pay status.

(5) Temporary employees earn vacation leave credits but may not use the credits until after working for 6 qualifying months.

(6) A short-term worker, as defined in 2-18-101, may not earn vacation leave credits, and time worked as a short-term worker does not apply toward the person's rate of earning vacation leave credits.

History: En. Sec. 1, Ch. 131, L. 1949; amd. Sec. 1, Ch. 152, L. 1951; amd. Sec. 1, Ch. 350, L. 1969; amd. Sec. 1, Ch. 121, L. 1971; amd. Sec. 1, Ch. 360, L. 1973; amd. Sec. 2, Ch. 476, L. 1973; amd. Sec. 1, Ch. 62, L. 1975; amd. Sec. 1, Ch. 479, L. 1977; R.C.M. 1947, 59-1001(1), (4); amd. Sec. 5, Ch. 568, L. 1979; amd. Sec. 1, Ch. 280, L. 1983; amd. Sec. 2, Ch. 593, L. 1985; amd. Sec. 1, Ch. 328, L. 1987; amd. Sec. 9, Ch. 339, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 339 in (5) near beginning after "employees", deleted "do not" and after "credits" substituted "but may not use the credits until after working for 6 qualifying months" for "except that a temporary employee who is subsequently hired into a permanent position within the same jurisdiction without a break in service and temporary employees who are employed continuously longer than 6 months may count as earned leave credits for the immediate term of temporary employment"; inserted (6) providing that a short-term worker may not earn vacation leave credits; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Job-sharing positions, 2-18-107.

2-18-612. Rate earned. (1) Vacation leave credits are earned at a yearly rate calculated in accordance with the following schedule, which applies to the total years of an employee's employment with any agency whether the employment is continuous or not:

Years of employment	Working days credit
1 day through 10 years	15
10 years through 15 years	18
15 years through 20 years	21
20 years on	24

(2) (a) For the purpose of determining years of employment under this section, an employee eligible to earn vacation credits under 2-18-611 must be credited with 1 year of employment for each period of:

(i) 2,080 hours of service following his date of employment; an employee must be credited with 80 hours of service for each biweekly pay period in which he is in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in the pay period; or

(ii) 12 calendar months in which he was in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in any one month. An employee of a school district, a school at a state institution, or the university system must be credited with 1 year of service if he is employed for an entire academic year.

(b) State agencies, other than the university system and a school at a state institution, must use the method provided in subsection (2)(a)(i) to calculate years of service under this section.

History: En. Sec. 1, Ch. 131, L. 1949; amd. Sec. 1, Ch. 152, L. 1951; amd. Sec. 1, Ch. 350, L. 1969; amd. Sec. 1, Ch. 121, L. 1971; amd. Sec. 1, Ch. 360, L. 1973; amd. Sec. 2, Ch. 476, L. 1973; amd. Sec. 1, Ch. 62, L. 1975; amd. Sec. 1, Ch. 479, L. 1977; R.C.M. 1947, 59-1001(3); amd. Sec. 6, Ch. 568, L. 1979; amd. Sec. 3, Ch. 593, L. 1985.

2-18-613. Repealed. Sec. 12, Ch. 568, L. 1979.

History: En. Sec. 4, Ch. 131, L. 1949; amd. Sec. 4, Ch. 350, L. 1969; R.C.M. 1947, 59-1004.

2-18-614. Military leave considered service. A period of absence from employment with the state, county, or city occurring either during a war involving the United States or in any other national emergency and for 90 days thereafter for one of the following reasons is considered as service for the purpose of determining the number of years of employment used in calculating vacation leave credits under this section:

(1) having been ordered on active duty with the armed forces of the United States;

(2) voluntary service on active duty in the armed forces or on ships operated by or for the United States government; or

(3) direct assignment to the United States department of defense for duties related to national defense efforts if a leave of absence has been granted by the employer.

History: En. Sec. 1, Ch. 131, L. 1949; amd. Sec. 1, Ch. 152, L. 1951; amd. Sec. 1, Ch. 350, L. 1969; amd. Sec. 1, Ch. 121, L. 1971; amd. Sec. 1, Ch. 360, L. 1973; amd. Sec. 2, Ch. 476, L. 1973; amd. Sec. 1, Ch. 62, L. 1975; amd. Sec. 1, Ch. 479, L. 1977; R.C.M. 1947, 59-1001(2).

Cross-References

Leave for military training program, 10-1-604.

2-18-615. Absence because of illness not chargeable against vacation unless employee approves. Absence from employment by reason of illness shall not be chargeable against unused vacation leave credits unless approved by the employee.

History: En. Sec. 5, Ch. 131, L. 1949; amd. Sec. 5, Ch. 350, L. 1969; amd. Sec. 4, Ch. 476, L. 1973; R.C.M. 1947, 59-1005.

2-18-616. Determination of vacation dates. The dates when employees' annual vacation leaves shall be granted shall be determined by agreement between each employee and his employing agency with regard to the best interest of the state, any county or city thereof as well as the best interests of each employee.

History: En. Sec. 6, Ch. 131, L. 1949; R.C.M. 1947, 59-1006.

2-18-617. Accumulation of leave — cash for unused — transfer. (1) (a) Except as provided in subsection (1)(b), annual vacation leave may be accumulated to a total not to exceed two times the maximum number of days earned annually as of the end of the first pay period of the next calendar year. Excess vacation time is not forfeited if taken within 90 calendar days from the last day of the calendar year in which the excess was accrued.

(b) It is the responsibility of the head of an employing agency to provide reasonable opportunity for an employee to use rather than forfeit accumulated vacation leave. If an employee makes a reasonable written request to use excess vacation leave before the excess vacation leave must be forfeited under subsection (1)(a) and the employing agency denies the request, the excess vacation leave is not forfeited and the employing agency shall ensure that the employee may use the excess vacation leave before the end of the calendar year in which the leave would have been forfeited under subsection (1)(a).

(2) An employee who terminates employment for a reason not reflecting discredit on the employee is entitled upon the date of termination to cash compensation for unused vacation leave, assuming that the employee has worked the qualifying period set forth in 2-18-611.

(3) However, if an employee transfers between agencies of the same jurisdiction, cash compensation may not be paid for unused vacation leave. In a transfer, the receiving agency assumes the liability for the accrued vacation credits transferred with the employee.

(4) This section does not prohibit a school district from providing cash compensation for unused vacation leave in lieu of the accumulation of the leave, either through a collective bargaining agreement or, in the absence of a collective bargaining agreement, through a policy.

History: (1)En. Sec. 2, Ch. 131, L. 1949; amd. Sec. 2, Ch. 350, L. 1969; amd. Sec. 2, Ch. 121, L. 1971; amd. Sec. 1, Ch. 148, L. 1974; Sec. 59-1002, R.C.M. 1947; (2), (3)En. Sec. 3, Ch. 131, L. 1949; amd. Sec. 3, Ch. 350, L. 1969; amd. Sec. 3, Ch. 476, L. 1973; Sec. 59-1003, R.C.M. 1947; R.C.M. 1947, 59-1002, 59-1003; amd. Sec. 1, Ch. 548, L. 1979; amd. Sec. 7, Ch. 568, L. 1979; amd. Sec. 1, Ch. 115, L. 1993; amd. Sec. 1, Ch. 143, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 143 inserted (4) allowing school districts to provide for cash compensation in lieu of accumulation of vacation leave. Amendment effective July 1, 1997.

2-18-618. Sick leave. (1) A permanent full-time employee earns sick leave credits from the first day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) equals 1 year. Sick leave credits must be credited at the end of each pay period. Sick leave credits are earned at the rate of 12 working days for each year of service without restriction as to the number of working days that may be accumulated. Employees are not entitled to be paid sick leave until they have been continuously employed 90 days.

(2) An employee may not accrue sick leave credits while in a leave-without-pay status.

(3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the qualifying period.

(4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.

(5) A short-term worker may not earn sick leave credits.

(6) An employee who terminates employment with the agency is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave must be computed on the basis of the employee's salary or wage at the time the employee terminates employment with the state, county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment is the responsibility of the agency in which the sick leave accrues. However, an employee does not forfeit any sick leave rights or benefits accrued prior to July 1, 1971. However, when an employee transfers between agencies within the same jurisdiction, the employee is not entitled to a lump-sum payment. In a transfer between agencies, the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

(7) An employee who receives a lump-sum payment pursuant to this section and who is again employed by any agency may not be credited with sick leave for which the employee has previously been compensated.

(8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this section.

(9) An employee may contribute any portion of the employee's accumulated sick leave to a nonrefundable sick leave fund for state employees and becomes eligible to draw upon the fund if an extensive illness or accident exhausts the employee's accumulated sick leave. The department of administration shall, in consultation with the state employee group benefits advisory council, provided for in 2-15-1016, administer the sick leave fund and adopt rules to implement this subsection.

(10) A local government may establish and administer through local rule a sick leave fund into which its employees may contribute a portion of their accumulated sick leave.

History: En. 59-1008 by Sec. 1, Ch. 93, L. 1971; amd. Sec. 5, Ch. 476, L. 1973; amd. Sec. 1, Ch. 309, L. 1975; R.C.M. 1947, 59-1008; amd. Sec. 8, Ch. 568, L. 1979; amd. Sec. 2, Ch. 280, L. 1983; amd. Sec. 1, Ch. 707, L. 1985; amd. Sec. 2, Ch. 328, L. 1987; amd. Sec. 1, Ch. 414, L. 1989; amd. Sec. 1, Ch. 25, L. 1991; amd. Sec. 2, Ch. 758, L. 1991; amd. Sec. 10, Ch. 339, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 339 inserted (5) providing that a short-term worker may not earn sick leave credits; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Job-sharing positions, 2-18-107.

2-18-619. Jury duty — service as witness. (1) Each employee who is under proper summons as a juror shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Juror fees shall be applied against the amount due the employee from his employer. However, if an employee elects to charge his juror time off against his annual leave, he shall not be required to remit his juror fees to his employer. In no instance is an employee required to remit to his employer any expense or mileage allowance paid him by the court.

(2) An employee subpoenaed to serve as a witness shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Witness fees shall be applied against the amount due the employee from his employer. However, if an employee elects to charge his witness time off against his annual leave, he shall not be required to remit his witness fees to his employer. In no instance is an employee required to remit to his employer any expense or mileage allowances paid him by the court.

(3) Employers may request the court to excuse their employees from jury duty if they are needed for the proper operation of a unit of state or local government.

History: En. Sec. 6, Ch. 476, L. 1973; amd. Sec. 1, Ch. 154, L. 1974; R.C.M. 1947, 59-1010; amd. Sec. 9, Ch. 568, L. 1979.

Cross-References

Juries and jurors, Title 3, ch. 15.

Subpoenas and witnesses, Title 26, ch. 2.

2-18-620. Mandatory leave of absence for employees holding public office — return requirements. (1) Employers of employees elected or appointed to a public office in the city, county, or state shall grant such employees leaves of absence, not to exceed 180 days per year, while they are performing public service. Employees of an employer who employs 10 or more persons must, upon complying with the requirements of subsection (2), be restored to their positions, with the same seniority, status, compensation, hours, locality, and benefits as existed immediately prior to their leaves of absence for public service under this section.

(2) Employees granted a leave shall make arrangements to return to work within 10 days following the completion of the service for which the leave was granted unless they are unable to do so because of illness or disabling injury certified to by a licensed physician.

(3) Any unemployment benefits paid to any person by application of this section shall not be charged against any employer under the unemployment insurance law.

History: En. 59-1011, 59-1012 by Secs. 1, 2, Ch. 107, L. 1975; R.C.M. 1947, 59-1011, 59-1012; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 692, L. 1991.

Cross-References

Unlawful political acts of employers and employees, 13-35-226.

2-18-621. Unlawful termination. It shall be unlawful for an employer to terminate or separate an employee from his employment in an attempt to circumvent the provisions of 2-18-611, 2-18-612, and 2-18-614. Should a question arise under this section, it shall be submitted to arbitration as provided in Title 27, chapter 5, as if an agreement described in 27-5-114 is in effect, unless there is a collective bargaining agreement to the contrary applicable.

History: En. Sec. 1, Ch. 131, L. 1949; amd. Sec. 1, Ch. 152, L. 1951; amd. Sec. 1, Ch. 350, L. 1969; amd. Sec. 1, Ch. 121, L. 1971; amd. Sec. 1, Ch. 360, L. 1973; amd. Sec. 2, Ch. 476, L. 1973; amd. Sec. 1, Ch. 62, L. 1975; amd. Sec. 1, Ch. 479, L. 1977; R.C.M. 1947, 59-1001(5); amd. Sec. 22, Ch. 684, L. 1985.

2-18-622. Reduction in force — severance pay and retraining allowance required. If a reduction in force is necessary, the state may provide severance pay and a retraining allowance. Within a collective bargaining unit, severance pay and the retraining allowance are negotiable subjects under 39-31-305.

History: En. Sec. 1, Ch. 758, L. 1991; amd. Sec. 8, Ch. 640, L. 1993; (3)En. Sec. 13, Ch. 640, L. 1993.

2-18-623 through 2-18-625 reserved.

2-18-626. Department of justice employees — payment of compensation for time spent answering subpoena. A department of justice employee must receive all regular duty pay and benefits for time spent answering a subpoena in a civil or criminal cause when called to testify in connection with the employee's official duties. The department of justice may bill the person or organization requesting issuance of the subpoena for reimbursement for the employee's time.

History: En. Sec. 1, Ch. 363, L. 1987.

Cross-References

Subpoenas and witnesses, Title 26, ch. 2.

Part 7

Group Insurance Generally

2-18-701. Definitions. In this part, as it applies to a person employed in the executive, judicial, or legislative branches of state government, "employee" means:

(1) a permanent full-time employee, as provided in 2-18-601;

(2) a permanent part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20 hours or more a week;

(3) a seasonal full-time employee, as provided in 2-18-601, who is regularly scheduled to work 6 months or more a year or who works for a continuous period of more than 6 months a year although not regularly scheduled to do so;

(4) a seasonal part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20 hours or more a week for 6 months or more a year or who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so;

(5) elected officials;

(6) officers and permanent employees of the legislative branch;

(7) judges and permanent employees of the judicial branch;

(8) academic, professional, and administrative personnel having individual contracts under the authority of the board of regents of higher education or the state board of public education;

(9) a temporary full-time employee, as provided in 2-18-601:

(a) who is regularly scheduled to work more than 6 months a year;

(b) who works for a continuous period of more than 6 months a year although not regularly scheduled to do so; or

(c) whose temporary status is defined through collective bargaining; and

(10) a temporary part-time employee, as provided in 2-18-601:

(a) who is regularly scheduled to work 20 hours or more a week for 6 months or more a year;

(b) who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so; or

(c) whose temporary status is defined through collective bargaining.

History: En. Sec. 1, Ch. 174, L. 1957; amd. Sec. 1, Ch. 83, L. 1965; amd. Sec. 1, Ch. 200, L. 1967; amd. Sec. 1, Ch. 220, L. 1969; amd. Sec. 1, Ch. 382, L. 1971; amd. Sec. 1, Ch. 188, L. 1974; amd. Sec. 1, Ch. 359, L. 1975; amd. Sec. 1, Ch. 437, L. 1975; amd. Sec. 1, Ch. 259, L. 1977; amd. Sec. 11, Ch. 563, L. 1977; R.C.M. 1947, 11-1024(5); amd. Sec. 12, Ch. 678, L. 1979; amd. Sec. 6, Ch. 421, L. 1981; amd. Sec. 1, Ch. 171, L. 1989.

2-18-702. Group insurance for public employees and officers. (1) All counties, cities, towns, school districts, and the board of regents shall upon approval by two-thirds vote of their respective officers and employees enter into group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans for the benefit of their officers and employees and their dependents. The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents.

(2) State employees and elected officials, as defined in 2-18-701, may participate in state employee group benefit plans as are provided for under part 8 of this chapter.

(3) For state officers and employees, the premiums required from time to time to maintain the insurance in force must be paid by the insured officers and employees, and the state treasurer shall deduct the premiums from the salary or wages of each officer or employee who elects to become insured, on the officer's or employee's written order, and issue a warrant for the premiums to the insurer.

(4) For the purpose of this section, the plans of health service corporations for defraying or assuming the cost of professional services of licentiates in the field of health or the services of hospitals, clinics, or sanitariums or both professional and hospital services must be construed as group insurance and the dues payable under the plans must be construed as premiums for group insurance.

(5) If the board of trustees of a school district implements a self-insured group health plan or if the board of regents implements an alternative to conventional insurance to provide group benefits to its employees, the board shall maintain the alternative plan on an actuarially sound basis.

History: (1)En. Sec. 1, Ch. 174, L. 1957; amd. Sec. 1, Ch. 83, L. 1965; amd. Sec. 1, Ch. 200, L. 1967; amd. Sec. 1, Ch. 220, L. 1969; amd. Sec. 1, Ch. 382, L. 1971; amd. Sec. 1, Ch. 188, L. 1974; amd. Sec. 1, Ch. 359, L. 1975; amd. Sec. 1, Ch. 437, L. 1975; amd. Sec. 1, Ch. 259, L. 1977; amd. Sec. 11, Ch. 563, L. 1977; Sec. 11-1024, R.C.M. 1947; (2)En. Sec. 11, Ch. 555, L. 1979; (3), (4)En. Sec. 1, Ch. 248, L. 1963; Sec. 40-3905.1, R.C.M. 1947; R.C.M. 1947, 11-1024(1), 40-3905.1; amd. Sec. 31, Ch. 184, L. 1979; amd. Sec. 7, Ch. 421, L. 1981; amd. Sec. 10, Ch. 660, L. 1989; amd. Sec. 1, Ch. 139, L. 1991; amd. Sec. 1, Ch. 13, L. 1993; amd. Sec. 3, Ch. 325, L. 1995.

Cross-References

Job-sharing positions, 2-18-107.

2-18-703. Contributions. (1) Each agency, as defined in 2-18-601, shall contribute the amount specified in this section towards the group benefits cost.

(2) For employees defined in 2-18-701 and for members of the legislature, the employer contribution for group benefits is $245 per month for the fiscal year ending June 30, 1998, and $270 a month for the fiscal year ending June 30, 1999, and for each succeeding fiscal year. When a state employee is terminated to achieve a reduction in force, the continuation of contributions for group benefits beyond the termination date is subject to negotiation under 39-31-305. Permanent part-time, seasonal part-time, and temporary part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but may not be less than $10 a month.

(4) Unused employer contributions for any state employee must be transferred to an account established for this purpose by the department of

administration and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member.

(5) Unused employer contributions for any government employee may be transferred to an account established for this purpose by a self-insured government and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member or to increase the reserves of the group.

(6) The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents.

History: En. Sec. 1, Ch. 174, L. 1957; amd. Sec. 1, Ch. 83, L. 1965; amd. Sec. 1, Ch. 200, L. 1967; amd. Sec. 1, Ch. 220, L. 1969; amd. Sec. 1, Ch. 382, L. 1971; amd. Sec. 1, Ch. 188, L. 1974; amd. Sec. 1, Ch. 359, L. 1975; amd. Sec. 1, Ch. 437, L. 1975; amd. Sec. 1, Ch. 259, L. 1977; amd. Sec. 11, Ch. 563, L. 1977; R.C.M. 1947, 11-1024(2); amd. Sec. 13, Ch. 678, L. 1979; amd. Sec. 8, Ch. 421, L. 1981; amd. Sec. 1, Ch. 207, L. 1983; amd. Sec. 11, Ch. 710, L. 1983; amd. Sec. 8, Ch. 740, L. 1985; amd. Sec. 2, Ch. 370, L. 1987; amd. Sec. 10, Ch. 661, L. 1987; amd. Sec. 2, Ch. 171, L. 1989; amd. Sec. 11, Ch. 660, L. 1989; amd. Sec. 1, Ch. 171, L. 1991; amd. Sec. 10, Ch. 720, L. 1991; amd. Sec. 3, Ch. 758, L. 1991; amd. Sec. 2, Ch. 13, L. 1993; amd. Sec. 9, Ch. 640, L. 1993; amd. Sec. 12, Ch. 455, L. 1995; amd. Sec. 10, Ch. 417, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 417 in (2), in first sentence, increased contributions to $245 from $220 and to $270 from $225 and substituted "1998" for "1996" and "1999" for "1997"; and made minor changes in style. Amendment effective July 1, 1997.

Funding: Section 2, Ch. 359, L. 1975, provided: "In compliance with section 43-517 [R.C.M. 1947, now 1-2-112, MCA], the administration of this act is declared a public purpose of a county, city, or town which may be in addition to any other levy and may be paid out of the general fund of the governing body and financed by a levy on the taxable value of property within the county, city, or town."

2-18-704. Mandatory provisions. (1) An insurance contract or plan issued under this part must contain provisions that permit:

(a) the member of a group who retires from active service under the appropriate retirement provisions provided by law to remain a member of the group until the member becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, unless the member is a participant in another group plan with substantially the same or greater benefits at an equivalent cost or unless the member is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost;

(b) the surviving spouse of a member to remain a member of the group as long as the spouse is eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible for equivalent insurance coverage as provided in subsection (1)(a);

(c) the surviving children of a member to remain members of the group as long as they are eligible for retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment of a surviving parent or legal guardian.

(2) An insurance contract or plan issued under this part must contain the provisions of subsection (1) for remaining a member of the group and also must permit:

(a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

(b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

(c) continued membership in the group by anyone eligible under the provisions of this section, notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

(3) (a) A state insurance contract or plan must contain provisions that permit a legislator to remain a member of the state's group plan until the legislator becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, if the legislator:

(i) terminates service in the legislature and is a vested member of a state retirement system provided by law; and

(ii) notifies the department of administration in writing within 90 days of the end of the legislator's legislative term.

(b) A former legislator may not remain a member of the group plan under the provisions of subsection (3)(a) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost.

(c) A legislator who remains a member of the group under the provisions of subsection (3)(a) and subsequently terminates membership may not rejoin the group unless the person again serves as a legislator.

(4) (a) A state insurance contract or plan must contain provisions that permit continued membership in the state's group plan by a member of the judges' retirement system who leaves judicial office but continues to be an inactive vested member of the judges' retirement system as provided by 19-5-301. The judge shall notify the department of administration in writing within 90 days of the end of the judge's judicial service of the judge's choice to continue membership in the group plan.

(b) A former judge may not remain a member of the group plan under the provisions of this subsection (4) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost;

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost; or

(iii) becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended.

(c) A judge who remains a member of the group under the provisions of this subsection (4) and subsequently terminates membership may not rejoin the group plan unless the person again serves in a position covered by the state's group plan.

(5) A person electing to remain a member of the group under subsection (1), (2), (3), or (4) shall pay the full premium for coverage and for that of the person's covered dependents.

(6) An insurance contract or plan issued under this part that provides for the dispensing of prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

(a) must permit any member of a group to obtain prescription drugs from a pharmacy located in Montana that is willing to match the price charged to the group or plan and to meet all terms and conditions, including the same professional requirements that are met by the mail service pharmacy for a drug, without financial penalty to the member; and

(b) may only be with an out-of-state mail service pharmacy that is registered with the board under Title 37, chapter 7, part 7, and that is registered in this state as a foreign corporation.

History: En. Sec. 1, Ch. 174, L. 1957; amd. Sec. 1, Ch. 83, L. 1965; amd. Sec. 1, Ch. 200, L. 1967; amd. Sec. 1, Ch. 220, L. 1969; amd. Sec. 1, Ch. 382, L. 1971; amd. Sec. 1, Ch. 188, L. 1974; amd. Sec. 1, Ch. 359, L. 1975; amd. Sec. 1, Ch. 437, L. 1975; amd. Sec. 1, Ch. 259, L. 1977; amd. Sec. 11, Ch. 563, L. 1977; R.C.M. 1947, 11-1024(3), (4); amd. Sec. 1, Ch. 181, L. 1983; amd. Sec. 1, Ch. 738, L. 1991; amd. Sec. 1, Ch. 300, L. 1993; amd. Sec. 1, Ch. 274, L. 1995; amd. Sec. 14, Ch. 42, L. 1997; amd. Sec. 1, Ch. 282, L. 1997.

Compiler's Comments

1997 Amendments: Chapter 42 in (3)(b) and (3)(c) substituted reference to subsection (3)(a) for reference to subsection (3). Amendment effective March 12, 1997.

Chapter 282 inserted (4) requiring an insurance contract or plan to provide for continued participation by a retired judge as inactive vested member and providing circumstances under which judge may not remain a member or rejoin; in (5) inserted reference to subsection (4); and made minor changes in style.

Retroactive Applicability: Section 2, Ch. 282, L. 1997, provided: "[This act] [2-18-704] applies retroactively, within the meaning of 1-2-109, to a judge who was a member of the state's group health insurance plan in effect on December 1, 1996, who is otherwise eligible under the provisions of 2-18-704 and who files written notice to the department of administration within 30 days of [the effective date of this act]." Effective October 1, 1997.

Funding: Section 2, Ch. 359, L. 1975, provided: "In compliance with section 43-517 [R.C.M. 1947, now 1-2-112, MCA], the administration of this act is declared a public purpose of a county, city, or town which may be in addition to any other levy and may be paid out of the general fund of the governing body and financed by a levy on the taxable value of property within the county, city, or town."

2-18-705 through 2-18-710 reserved.

2-18-711. Cooperative purchasing of employee benefit services and insurance products — procedures. (1) To provide employee group benefits, an agency, as defined in 2-18-601, may participate with other agencies, nonprofit organizations, or business entities and in voluntary disability insurance purchasing pools provided for under 33-22-1815 if the agency determines that cooperative purchasing is in the agency's best interest.

(2) Cooperative purchases under this section may be conducted according to purchasing procedures developed by the participating parties if, for contracts valued at $20,000 a year or more, purchasing procedures, at a minimum, include:

(a) public notice in three major Montana newspapers of requirements for submitting bids or offers; and

(b) consideration of all submitted bids or offers.

(3) For purposes of this section, "employee" also means a schoolteacher.

History: En. Sec. 1, Ch. 147, L. 1997.

Compiler's Comments

Effective Date: Section 3, Ch. 147, L. 1997, provided: "[This act] is effective on passage and approval." Approved March 25, 1997.

Part 8

State Group Insurance

2-18-801 through 2-18-807. Repealed. Sec. 14, Ch. 555, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

2-18-801. (1)En. by Code Commissioner, 1979; (2), (3)En. Sec. 1, Ch. 438, L. 1973; amd. Sec. 1, Ch. 347, L. 1975; R.C.M. 1947, 59-1501.

2-18-802. En. Sec. 6, Ch. 438, L. 1973; R.C.M. 1947, 59-1506.

2-18-803. En. Sec. 3, Ch. 438, L. 1973; R.C.M. 1947, 59-1503(3).

2-18-804. En. Sec. 4, Ch. 438, L. 1973; R.C.M. 1947, 59-1504.

2-18-805. En. Sec. 7, Ch. 438, L. 1973; R.C.M. 1947, 59-1507.

2-18-806. En. Sec. 2, Ch. 438, L. 1973; R.C.M. 1947, 59-1502.

2-18-807. En. Sec. 5, Ch. 438, L. 1973; R.C.M. 1947, 59-1505.

2-18-808. Purpose. The purpose of this part is to establish a program under which the state may provide state employees with adequate group hospitalization, health, medical, disability, life, and other related group benefits in an efficient manner and at an affordable cost.

History: En. Sec. 1, Ch. 555, L. 1979.

2-18-809. Definitions. As used in this part, the following definitions apply:

(1) "Advisory council" means the state employee group benefits advisory council provided for in 2-15-1016.

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) "Group benefits" means group hospitalization, health, medical, surgical, disability, life, and other similar and related group benefits provided to officers and employees of the state. The term "group benefits" does not include casualty insurance, defined in 33-1-206; marine insurance, authorized in 33-1-209 and 33-1-221 through 33-1-229; property insurance, defined in 33-1-210; surety insurance, defined in 33-1-211; and title insurance, defined in 33-1-212.

(4) "State employee" means an employee of the state, specifically including a member or employee of the legislative branch of state government. The term "state employee" does not include employees of counties, cities, towns, school districts, or the Montana university system.

History: En. Sec. 2, Ch. 555, L. 1979; amd. Sec. 10, Ch. 467, L. 1981.

2-18-810. Functions of advisory council. (1) The department shall meet and consult with the advisory council before negotiating, contracting, or otherwise modifying state employee group benefit plans.

(2) The advisory council shall meet quarterly to review the existing state employee group benefit plans, to review claims problems, and to advise the department on state employee group benefit matters.

History: En. Sec. 4, Ch. 555, L. 1979.

2-18-811. General duties of the department. The department shall:

(1) adopt rules for the conduct of its business under this part and to carry out the purposes of this part;

(2) negotiate and administer contracts for state employee group benefit plans;

(3) design state employee group benefit plans, establish specifications for bids, and make recommendations for acceptance or rejection of bids;

(4) prepare an annual report which describes the state employee group benefit plans being administered, details the historical and projected program costs and the status of reserve funds, and makes recommendations, if any, for change in existing state employee group benefit plans;

(5) prior to each legislative session, perform or obtain an analysis of rate adequacy of all state employee group benefit plans administered under this part; and

(6) submit the report required in this section to the office of budget and program planning as a part of the information required by 17-7-111.

History: En. Sec. 5, Ch. 555, L. 1979; amd. Sec. 11, Ch. 112, L. 1991; amd. Sec. 10, Ch. 349, L. 1993.

2-18-812. Alternatives to conventional insurance for providing state employee group benefits authorized — requirements. The department may establish alternatives to conventional insurance for providing state employee group benefits. The requirements for providing alternatives to conventional insurance are as follows:

(1) The department shall maintain state employee group benefit plans on an actuarially sound basis.

(2) The department shall maintain reserves sufficient to liquidate the unrevealed claims liability and other liabilities of state employee group benefit plans.

(3) The department shall deposit all reserve funds and premiums paid to a state employee group benefit plan, and the deposits must be expended for claims under the plan.

(4) The department shall deposit income earned from the investment of a state employee group benefit plan's reserve fund into the account established under subsection (3) in order to offset the costs of administering the plan. Expenditures for actual and necessary expenses required for the efficient administration of the plan must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

(5) The department shall, prior to implementation of any alternative to conventional insurance, present to the advisory council the evidence upon which the department has concluded that the alternative method will be more efficient, less costly, or otherwise superior to contracting for conventional insurance.

(6) The provisions of Title 33 do not apply to the department when exercising the powers and duties provided for in this section.

History: En. Sec. 6, Ch. 555, L. 1979; amd. Sec. 5, Ch. 703, L. 1985; amd. Sec. 1, Ch. 628, L. 1989; amd. Sec. 3, Ch. 532, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 532 in (3), near middle after "deposits", substituted "must" for "are statutorily appropriated, as provided in 17-7-502, to the department to"; in (5) deleted second sentence that read: "The department may not implement any full self-insurance alternative prior to July 1, 1981"; and made minor changes in style. Amendment effective July 1, 1997.

2-18-813. Combining existing employee groups authorized. The department may combine existing state employee groups into larger groups for the purpose of establishing state employee group benefit plans on behalf of the combined groups. The department may also combine state employees into a single group for purposes of state employee group benefits under this part.

History: En. Sec. 7, Ch. 555, L. 1979.

2-18-814. Administrative costs. The department shall include the costs of administering and negotiating state employee group benefit plans established under this part, as well as the costs of hiring necessary consultants, actuaries, and auditors under this part, as part of the cost for state employee group benefits.

History: En. Sec. 8, Ch. 555, L. 1979.

2-18-815. Transfer of authority of board of regents authorized. (1) The board of regents of higher education may transfer its authority for providing group benefits for employees of the Montana university system to the department.

(2) Upon transfer of the board of regents' authority as provided in (1) of this section, group benefit plans for employees of the Montana university system are subject to the provisions of this part.

History: En. Sec. 9, Ch. 555, L. 1979.

Cross-References

Board of Regents, Art. X, sec. 9, Mont. Const.; 2-15-1505.

Montana University System — regents' powers and duties, Title 20, ch. 25, part 3.

2-18-816. Biennial audit of group benefit plans required. The state employee group benefit plans established under this part, whether established on a self-funded basis or not, must be audited every 2 years. The audit must cover the 2-year period since the last audit and be conducted by or at the direction of the legislative auditor.

History: En. Sec. 10, Ch. 555, L. 1979; amd. Sec. 1, Ch. 86, L. 1989.

Cross-References

Legislative Auditor, Title 5, ch. 13, part 3.

Certified public accountants, 37-50-302.

Part 9

Subrogation — Notice

Part Cross-References

Subrogation rights — collateral source reductions, 27-1-308.

Disability insurance — subrogation rights, Title 33, ch. 22, part 16.

Workers' compensation — subrogation, 39-71-414.

2-18-901. Subrogation rights. A disability insurance policy subject to this chapter may contain a provision providing that, to the extent necessary for reimbursement of benefits paid to or on behalf of the insured, the insurer is entitled to subrogation, as provided for in 2-18-902, against a judgment or recovery received by the insured from a third party found liable for a wrongful act or omission that caused the injury necessitating benefit payments.

History: En. Sec. 1, Ch. 365, L. 1987.

2-18-902. Notice — shared costs of third-party action — limitation. (1) If an insured intends to institute an action for damages against a third party, the insured shall give the insurer reasonable notice of his intention to institute the action.

(2) The insured may request that the insurer pay a proportionate share of the reasonable costs of the third-party action, including attorney fees.

(3) An insurer may elect not to participate in the cost of the action. If such an election is made, the insurer waives 50% of any subrogation rights granted to it by 2-18-901.

(4) The insurer's right of subrogation granted in 2-18-901 may not be enforced until the injured insured has been fully compensated for his injuries.

History: En. Sec. 3, Ch. 365, L. 1987.

Part 10
Grievance Procedures

2-18-1001. Transportation department personnel grievances — hearing. (1) An employee of the department of transportation aggrieved by a serious matter of his employment based upon work conditions, supervision, or the result of an administrative action and who has exhausted all other administrative remedies is entitled to a hearing before the board of personnel appeals, under the provisions of a grievance procedure to be prescribed by the board, for resolution of the grievance.

(2) Direct or indirect interference, restraint, coercion, or retaliation by an employee's supervisor or the department of transportation against an aggrieved employee because the employee has filed or attempted to file a grievance with the board shall also be basis for a grievance and shall entitle the employee to a hearing before the board for resolution.

(3) A grievance under this part must be filed with the board of personnel appeals within 180 days after the alleged incident or action occurred. Failure to file the grievance within this period is a bar to proceeding with the grievance.

History: En. 32-2505.1 by Sec. 1, Ch. 377, L. 1975; Sec. 32-2505.1, R.C.M. 1947; En. 32-2505 by Sec. 2, Ch. 28, L. 1974; Sec. 32-2505, R.C.M. 1947; R.C.M. 1947, 32-2505(part), 32-2505.1; amd. Sec. 1, Ch. 14, L. 1991; amd. Sec. 3, Ch. 512, L. 1991.

2-18-1002. Grievance procedure — hearing — order. (1) The board of personnel appeals provided for in 2-15-1705 shall hear grievances of personnel of the department of transportation.

(2) If, upon the preponderance of the evidence taken at the hearing, the board is of the opinion that the employee is aggrieved, it may issue an order to the department of transportation to require an action by the department to resolve the employee's grievance. In a hearing, the board is not bound by statutory or common-law rules of evidence. The hearing may be conducted by telephone or by videoconference.

History: (1)En. 32-2505 by Sec. 2, Ch. 28, L. 1974; Sec. 32-2505, R.C.M. 1947; (2)En. 32-2505.2 by Sec. 2, Ch. 377, L. 1975; Sec. 32-2505.2, R.C.M. 1947; R.C.M. 1947, 32-2505(part), 32-2505.2; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 2, Ch. 90, L. 1995.

2-18-1003. Enforcement of board order — petition in district court. The board or the aggrieved employee may petition for the enforcement of the board's order and for appropriate temporary relief and shall file in the district court the record of the proceedings. Upon the filing of the petition, the district court shall have jurisdiction of the proceeding. Thereafter, the district court shall set the matter for hearing. After the hearing, the district court shall issue its order granting such temporary or permanent relief as it considers just and proper. No objection that has not been raised before the board shall be considered by the court unless the failure or neglect to raise the objection is excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

History: En. 32-2505.3 by Sec. 3, Ch. 377, L. 1975; R.C.M. 1947, 32-2505.3.

2-18-1004 through 2-18-1010 reserved.

2-18-1011. Classification or compensation grievance — retaliation — hearing on complaint. (1) An employee or his representative affected by the operation of parts 1 through 3 of this chapter is entitled to file a complaint with the board of personnel appeals provided for in 2-15-1705 and to be heard under the provisions of a grievance procedure to be prescribed by the board.

(2) Direct or indirect interference, restraint, coercion, or retaliation by an employee's supervisor or the agency for which the employee works or by any other agency of state government against an employee because the employee has filed or attempted to file a complaint with the board shall also be basis for a complaint and shall entitle the employee to file a complaint with the board and to be heard under the provisions of the grievance procedure prescribed by the board.

(3) An action attempting to revise the class specifications of or series of class specifications involving an employee exercising a right conferred by 2-18-1011 through 2-18-1013 in a way which would adversely affect the employee prior to final resolution or entry of a final order with respect thereto is presumed to be an interference, restraint, coercion, or retaliation prohibited by subsection (2) of this section unless such review was commenced or scheduled prior to filing of the appeal and was not prompted by the grievance appealed from. The presumption is rebuttable.

History: En. 82A-1014 by Sec. 15, Ch. 440, L. 1973; amd. Sec. 1, Ch. 47, L. 1974; amd. Sec. 1, Ch. 378, L. 1975; amd. Sec. 1, Ch. 545, L. 1977; R.C.M. 1947, 82A-1014(part); amd. Sec. 14, Ch. 575, L. 1981.

2-18-1012. Grievance procedure. If, upon the preponderance of the evidence taken at the hearing, the board is of the opinion that the employee is aggrieved, it may issue an order to the appropriate agency or agencies of state government to require an action to resolve the employee's grievance. In a hearing, the board is not bound by statutory or common-law rules of evidence. The hearing may be conducted by telephone or by videoconference.

History: En. 82A-1014 by Sec. 15, Ch. 440, L. 1973; amd. Sec. 1, Ch. 47, L. 1974; amd. Sec. 1, Ch. 378, L. 1975; amd. Sec. 1, Ch. 545, L. 1977; R.C.M. 1947, 82A-1014(part); amd. Sec. 3, Ch. 90, L. 1995.

2-18-1013. Enforcement of board order — petition to district court. The board or the employee may petition for the enforcement of the board's order and for appropriate temporary relief and shall file in the district court the record of the proceedings. Upon the filing of the petition, the district court shall have jurisdiction of the proceeding. Thereafter, the district court shall set the matter for hearing. After the hearing, the district court shall issue its order granting such temporary or permanent relief as it considers just and proper. No objection that has not been raised before the board shall be considered by the court unless the failure or neglect to raise the objection is excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

History: **En. 82A-1014 by Sec. 15, Ch. 440, L. 1973; amd. Sec. 1, Ch. 47, L. 1974; amd. Sec. 1, Ch. 378, L. 1975; amd. Sec. 1, Ch. 545, L. 1977; R.C.M. 1947, 82A-1014(4)(d).**

Part 11

Employee Incentive Program

2-18-1101. Definitions. As used in this part, the following definitions apply:

(1) "Agency head" means a director, commissioner, or constitutional officer in charge of an executive, legislative, or judicial branch agency or an agency of the Montana university system. The term includes the president or other person in charge of a unit of the Montana university system.

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) "Employee" means an employee of the executive, legislative, or judicial branch or the Montana university system.

(4) "Group or team of employees" means a group, team, or work unit of employees working cooperatively.

History: **En. Sec. 1, Ch. 552, L. 1981; amd. Sec. 1, Ch. 61, L. 1983; amd. Sec. 2, Ch. 103, L. 1985; amd. Sec. 1, Ch. 23, Sp. L. November 1993.**

Compiler's Comments

Termination Date Removed: Section 17, Ch. 417, L. 1997, and sec. 40, Ch. 532, L. 1997, removed the termination date for the amendments enacted by sec. 13, Ch. 23, Special Laws of November 1993.

2-18-1102. Creation of program. The department shall develop a statewide employee incentive award program to appropriately recognize and monetarily reward individual state employees and groups or teams of employees for documented innovations that contribute to the efficiency, economy, or other improvement of state government by reducing the costs or improving the effectiveness of governmental operations.

History: **En. Sec. 2, Ch. 552, L. 1981; amd. Sec. 1, Ch. 61, L. 1983; amd. Sec. 2, Ch. 103, L. 1985; amd. Sec. 2, Ch. 23, Sp. L. November 1993; amd. Sec. 11, Ch. 417, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 417 near beginning, after "develop", deleted "and administer" and near middle substituted "innovations" for "achievements and outcomes". Amendment effective July 1, 1997.

Termination Date Removed: Section 17, Ch. 417, L. 1997, and sec. 40, Ch. 532, L. 1997, removed the termination date for the amendments enacted by sec. 13, Ch. 23, Special Laws of November 1993.

2-18-1103. Powers and duties of department. The department shall:

(1) adopt rules to implement this part;

(2) develop model guidelines and promotional materials to assist agencies in implementing this part; and

(3) prepare and submit, in the manner provided in 5-11-210, a list of awards granted under 2-18-1106 and the corresponding savings to the state and improvements in the effectiveness of state government.

History: En. Sec. 3, Ch. 552, L. 1981; amd. Sec. 1, Ch. 61, L. 1983; amd. Sec. 2, Ch. 103, L. 1985; amd. Sec. 1, Ch. 23, Sp. L. June 1986; amd. Sec. 12, Ch. 112, L. 1991; amd. Sec. 11, Ch. 349, L. 1993; amd. Sec. 3, Ch. 23, Sp. L. November 1993; amd. Sec. 12, Ch. 417, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 417 deleted former (2) and (3) that read: "provide an opportunity for all employees to participate in the program;

(3) assist agencies in making incentive awards under this part"; inserted (2) relating to guidelines and promotional materials; in (3) substituted "awards granted under 2-18-1106" for "incentive awards" and at end deleted "and shall provide a general review of and recommendations for improving the operation of this part"; and made minor changes in style. Amendment effective July 1, 1997.

Termination Date Removed: Section 17, Ch. 417, L. 1997, and sec. 40, Ch. 532, L. 1997, removed the termination date for the amendments enacted by sec. 13, Ch. 23, Special Laws of November 1993.

2-18-1104. Repealed. Sec. 9, Ch. 23, Sp. L. November 1993.

History: En. Sec. 4, Ch. 552, L. 1981; amd. Sec. 1, Ch. 61, L. 1983; amd. Sec. 2, Ch. 103, L. 1985.

2-18-1105. Eligibility for award. (1) Except as provided in subsection (3), an employee, a group or team of employees, or a nonemployee is eligible for an incentive award for innovations that:

(a) significantly contribute to achievements or outcomes eliminating or reducing an agency's expenditures; or

(b) improve the effectiveness of state government or improve services to the public by permitting more work to be accomplished within an agency without increasing the cost of governmental operations.

(2) To be eligible for an incentive award, an employee, a group or team of employees, or a nonemployee must receive approval from agency management for immediate implementation, for a short-term test of an idea or innovation, or for the development and testing of a prototype that could make significant improvement in the way an agency conducts business by addressing fiscal, customer service, efficiency, or safety issues.

(3) A director, as defined in 2-15-102, or a legislator is not eligible for the incentive award provided for under this part.

(4) Suggestions relating to an agency are eligible for an award from that agency's agency head even if the employee or group or team of employees, or one or more members of the group or team, do not work for that agency.

History: En. Sec. 5, Ch. 552, L. 1981; amd. Sec. 1, Ch. 61, L. 1983; amd. Sec. 2, Ch. 103, L. 1985; amd. Sec. 4, Ch. 23, Sp. L. November 1993; amd. Sec. 13, Ch. 417, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 417 in (1), in exception clause at end, inserted "for innovations that"; in (1)(a), at beginning, deleted "for efforts that" and after "contribute to" deleted "documented"; deleted (2)(a) that read: "(a) An employee or nonemployee is not eligible for an individual incentive award unless the employee's or nonemployee's documented achievement or outcome was accomplished without significant contributions from others"; inserted (2) relating to approval for implementation or testing; adjusted subsection references; and made minor changes in style. Amendment effective July 1, 1997.

Termination Date Removed: Section 17, Ch. 417, L. 1997, and sec. 40, Ch. 532, L. 1997, removed the termination date for the amendments enacted by sec. 13, Ch. 23, Special Laws of November 1993.

2-18-1106. Agency head to grant award — amount and source of award. (1) An agency head may grant an incentive award to an employee, a group or team of employees, or a nonemployee who has made a significant contribution to achievements or outcomes in the agency, as enumerated in 2-18-1105. An employee or a member of a group or team of employees need not be employed by the agency that benefits from the achievement or outcome and whose agency head grants the award in order to be granted an award.

(2) If agency management determines that an idea, innovation, or prototype that has been implemented will result in cost savings or improvements to agency operations, the agency head, at the agency head's discretion, may grant an incentive award of up to $500, up to 40 hours paid leave time, or other nonmonetary recognition.

(3) If an achievement or outcome produces cost savings that can be measured after the savings are actually realized or that can be accurately projected for a period of 12 months following implementation, a larger award may be granted by the agency head. The amount of the award must be determined by the agency head but may not exceed:

(a) 10% of the first $100,000 of cost savings actually realized or accurately projected; plus

(b) 5% of the next $100,000 of cost savings actually realized or accurately projected; plus

(c) 2% of the next $100,000 of cost savings actually realized or accurately projected.

(4) (a) If the award is to be divided between two or more persons, the agency head shall determine the amount each person is to receive.

(b) Each person must be paid in one lump sum no later than 90 days after the end of the 12-month period following implementation of the suggestion. However, an agency head may pay an award at any time that savings can be determined. The agency head shall pay the award from the agency's budget. This award is in addition to the recipient's regular compensation or leave time.

(5) Within 30 days after the end of each fiscal year, each agency shall submit to the department a list of the number of incentive awards granted, to whom each award was granted, the estimated value of each achievement or outcome, and the amount of each award.

History: En. Sec. 6, Ch. 552, L. 1981; amd. Sec. 1, Ch. 61, L. 1983; amd. Secs. 1, 2, Ch. 103, L. 1985; amd. Sec. 2, Ch. 23, Sp. L. June 1986; amd. Sec. 1, Ch. 201, L. 1987; amd. Sec. 5, Ch. 23, Sp. L. November 1993; amd. Sec. 14, Ch. 417, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 417 deleted former (2) that read: "The incentive award for an achievement or outcome that does not result in cost savings that can be specifically determined a year after the achievement or outcome is implemented and the cost savings are actually incurred is the agency head's estimated dollar value of the achievement or outcome, up to a maximum of $500 per employee or nonemployee or, in the discretion of the agency head, not more than 40 hours of paid leave time for an employee. Larger awards may be proposed and submitted to the legislature for consideration"; inserted (2) relating to discretionary awards; in (3), at end of first sentence, substituted "realized or that can be accurately projected for a period of 12 months following implementation, a larger award may be granted by the agency head" for "incurred"; in (3)(a) substituted "realized or accurately projected" for "incurred during the 12 months following implementation of the suggestion"; in (3)(b) and (3)(c) substituted "realized or accurately projected" for "incurred during that 12-month period"; deleted former (5) that read: "(5) The number of awards granted by an agency in a state government fiscal year may not exceed the number equal to 20% of the average number of full-time equivalent employees in that agency during that fiscal year. The office of budget and program planning may grant an agency with less than 50 full-time equivalent employees an exemption from this limitation, but the exemption may not allow more awards than the number equal to 50% of the average number of full-time equivalent employees in the agency during the fiscal year"; and made minor changes in style. Amendment effective July 1, 1997.

Termination Date Removed: Section 17, Ch. 417, L. 1997, and sec. 40, Ch. 532, L.1997, removed the termination date for the amendments enacted by sec. 13, Ch. 23, Special Laws of November 1993.

2-18-1107. Salary increase based on elimination of position. An agency head, as defined in 2-18-1101, may, with the approval of the approving authority, as defined in 17-7-102, increase the salary for one or more positions in the agency by the amount of the salary for a position that was permanently eliminated by the agency within the last 30 days. However, an increased salary may not exceed the market salary for that position determined under Title 2, chapter 18, part 3. If an eliminated position's salary is redistributed under this section, the agency may not be given an increased appropriation in regard to the eliminated position under 2-15-112(2)(e). An increase for an employee who is in a collective bargaining unit is a negotiable subject under 39-31-305.

History: En. Sec. 6, Ch. 23, Sp. L. November 1993.

Compiler's Comments

Termination Date Removed: Section 17, Ch. 417, L. 1997, and sec. 40, Ch. 532, L. 1997, removed the termination date for this section as enacted by sec. 13, Ch. 23, Special Laws of November 1993.

Part 12

State Employee Protection Act

2-18-1201. Short title. This part may be cited as the "State Employee Protection Act".

History: En. Sec. 1, Ch. 477, L. 1993.

2-18-1202. Definitions. As used in this part, the following definitions apply:

(1) "Agency" has the meaning provided in 2-18-101 but does not include the Montana university system.

(2) "Employee" means a person employed by the state who has achieved permanent status, as defined in 2-18-101, or officers and employees of the legislative branch and teachers under the authority of the department of corrections or department of public health and human services who have been employed for at least 6 continuous months.

(3) "Privatization" means contracting with the private sector to provide a service normally or traditionally provided directly by an employee of an agency.

History: En. Sec. 2, Ch. 477, L. 1993; amd. Sec. 1, Ch. 524, L. 1995; amd. Sec. 15, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in definition of employee, after "6 continuous months", deleted "and who have waived benefits under the provisions of 2-18-319 and 2-18-320". Amendment effective March 12, 1997.

2-18-1203. General protection — job register — seniority preference. (1) An employee whose position is eliminated as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature is entitled to:

(a) notice of announcements for jobs for which the employee may qualify that arise within the terminating agency or within state government. Notices must be provided by the state for a period of 1 year from the date of separation.

(b) access to any job retraining and career development programs provided by the state through the Job Training Partnership Act service delivery areas dislocated worker programs, provided that the employee begins participating in a program within 1 year after the elimination of the employee's position; and

(c) inclusion in a special job register from which all agencies, except an agency attempting to hire for a position exempt under 2-18-103 or 2-18-104, shall attempt to hire employees prior to seeking applications from the general public. The employee must be listed in the job register according to the occupational categories in which the employee is qualified for employment. An employee's eligibility to participate in the job register terminates 2 years from the effective date of the employee's layoff or 2 years from the date of the employee's completion of job training provided under subsection (1)(b), whichever is later.

(2) (a) An agency attempting to hire from the job register shall consider the employee's qualifications and length of state service. If two or more employees listed in the job register are equally qualified for a vacant position, the agency shall select the employee with the longest continuous state service.

(b) If there is not an employee listed on the job register who meets the job qualifications for the vacant position, the agency may hire a qualified external applicant or establish a training assignment, according to state policy.

(3) Each state agency shall pay to the department of labor and industry a set amount that is equal to the department's average cost of providing the retraining and development services for state employees in the previous fiscal year for each involuntarily terminated state employee who requests access to any job training and career development program provided by the department.

History: En. Sec. 3, Ch. 477, L. 1993; amd. Sec. 1, Ch. 24, Sp. L. November 1993; amd. Sec. 2, Ch. 524, L. 1995; amd. Sec. 1, Ch. 361, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 361 in (1)(c) inserted third sentence regarding eligibility for participation in the job register; and inserted (3) regarding payment of costs for retraining and development services. Amendment effective July 1, 1997.

2-18-1204. Salary and benefits protection — employee transfer. (1) An employee whose position is eliminated as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature and who is subsequently transferred to a different position in a state agency is entitled to:

(a) the same hourly salary as previously received if the new position is at the same grade level or higher as the one previously held;

(b) retain all accrued sick leave credits;

(c) retain, cash out, or use accrued vacation leave credits to extend the employee's effective layoff date; and

(d) relocation expenses as provided in state policy.

(2) Relocation expenses must be paid by the hiring agency, and the funds expended by the hiring agency must be reimbursed from the funds appropriated for this purpose, including those funds subject to transfer under the provisions of section 6, Chapter 524, Laws of 1995.

History: **En. Sec. 4, Ch. 477, L. 1993; amd. Sec. 3, Ch. 524, L. 1995.**

2-18-1205. Continuation of health insurance and employer contributions. (1) During the period of unemployment as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature, the employee is entitled to remain covered by the state's group health insurance plan and to the continuation of the employer's contribution to the employee's group health insurance for 6 months from the effective date of layoff or until the employee becomes employed, whichever occurs first.

(2) For the purposes of this section, the term "agency" includes the Montana university system.

History: **En. Sec. 5, Ch. 477, L. 1993; amd. Sec. 4, Ch. 524, L. 1995.**

2-18-1206. Notice. (1) Except as provided in subsection (2), an employee and the employee's collective bargaining unit, if any, must be notified as soon as possible prior to privatization, reorganization of any agency, or closure of or a reduction in force at an agency. When 25 or more employees are affected, the notice must be given at least 60 days prior to the privatization, reorganization, agency closure, or reduction in force.

(2) When privatization, reorganization, an agency closure, or a reduction in force affects fewer than 25 employees, each employee affected must be notified at least 14 days prior to the privatization, reorganization, agency closure, or reduction in force.

History: **En. Sec. 6, Ch. 477, L. 1993.**

CHAPTER 19

TERMINATION OF STATE AGENCIES

Part 1 — Procedure

2-19-101. Definitions.
2-19-102. Closing out defunct state agencies — procedures.

Part 1
Procedure

2-19-101. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of administration created in 2-15-1001.

(2) "State agency" means any state office, board, bureau, commission, department, or agency but does not include any agency operated by a city, town, county, school district, or other political subdivision.

History: **En Sec. 1, Ch. 333, L. 1979.**

2-19-102. Closing out defunct state agencies — procedures. Unless otherwise provided by law, the following procedures apply whenever a state agency is terminated by operation of law, is abolished by executive or legislative action, ceases to function, or otherwise becomes defunct:

(1) The department becomes the receiver of all real and personal property of the agency, including all books, records, and accounts, and shall determine all remaining assets and liabilities of the defunct agency. The department shall inventory all personal property of the agency and may reassign the property to other state agencies or otherwise dispose of it as provided in Title 18, chapter 6, part 1.

(2) The department must pay any creditors of the defunct state agency from the funds remaining in the agency's current budget. However, if insufficient funds remain to settle all outstanding accounts, then the department shall prorate all claims in the ratio of their amount to the total cash available. The department shall seek a supplemental appropriation from the next regular session of the legislature to pay the remaining balance of the creditors' claims. Any funds remaining after payment to all creditors of the defunct agency must be deposited by the department into the general fund.

History: En Sec. 2, Ch. 333, L. 1979.

Cross-References

Effect of reorganization of Executive Branch, 2-15-131 through 2-15-137.

CHAPTERS 20 THROUGH 88

RESERVED

CHAPTER 89

MONTANA STATEHOOD CENTENNIAL (Repealed and Terminated)

Part 1

Statehood Centennial Office and Commission (Terminated. Sec. 8, Ch. 664, L. 1985)

Part Compiler's Comments

Histories of Terminated Sections:

2-89-101. En. Sec. 1, Ch. 664, L. 1985.

2-89-102. En. Sec. 2, Ch. 664, L. 1985.

2-89-103 and 2-89-104 reserved.

2-89-105. En. Sec. 5, Ch. 664, L. 1985; amd. Sec. 3, Ch. 383, L. 1989.

2-89-106. En. Sec. 6, Ch. 664, L. 1985; amd. Sec. 4, Ch. 383, L. 1989.

2-89-107. En. Sec. 4, Ch. 664, L. 1985.

2-89-108. En. Sec. 2, Ch. 383, L. 1989.

2-89-109. En. Sec. 1, Ch. 383, L. 1989.

Part 2

Centennial Acre (Repealed)

2-89-201. Repealed. Sec. 315, Ch. 42, L. 1997.

History: En. Sec. 1, Ch. 489, L. 1985.

2-89-202. Repealed. Sec. 315, Ch. 42, L. 1997.

History: En. Sec. 2, Ch. 489, L. 1985; amd. Sec. 2, Ch. 10, L. 1993.

2-89-203 and 2-89-204 reserved.

2-89-205. Repealed. Sec. 315, Ch. 42, L. 1997.
History: En. Sec. 3, Ch. 489, L. 1985.

2-89-206. Repealed. Sec. 315, Ch. 42, L. 1997.
History: En. Sec. 4, Ch. 489, L. 1985.

2-89-207. Repealed. Sec. 85, Ch. 10, L. 1993.
History: En. Sec. 5, Ch. 489, L. 1985; amd. Sec. 3, Ch. 602, L. 1987.

2-89-208. Repealed. Sec. 315, Ch. 42, L. 1997.
History: En. Sec. 6, Ch. 489, L. 1985.

2-89-209. Repealed. Sec. 315, Ch. 42, L. 1997.
History: En. Sec. 7, Ch. 489, L. 1985.

Part 3

Centennial Plates
(Terminated. Sec. 4, Ch. 654, L. 1989)

Part Compiler's Comments

Histories of Terminated Sections:

2-89-301. En. Sec. 1, Ch. 674, L. 1985; amd. Sec. 3, Ch. 10, L. 1993.

2-89-302. En. Sec. 2, Ch. 674, L. 1985; amd. Sec. 1, Ch. 108, L. 1987; amd. Sec. 5, Ch. 383, L. 1989; amd. Sec. 3, Ch. 654, L. 1989; amd. Sec. 4, Ch. 10, L. 1993.

2-89-303. En. Sec. 3, Ch. 674, L. 1985; amd. Sec. 6, Ch. 383, L. 1989.

TITLE 3

JUDICIARY, COURTS

Ch.
1. Courts and Judicial Officers Generally.
2. Supreme Court.
Chapters 3 and 4 reserved.
5. District Courts.
6. Municipal Courts.
7. Water Courts.
Chapters 8 and 9 reserved.
10. Justices' Courts.
11. City Courts.
12. Small Claims Courts.
Chapters 13 and 14 reserved.
15. Juries and Jurors.

CHAPTER 1

COURTS AND JUDICIAL OFFICERS GENERALLY

Part 1 — Courts—Definitions and General Powers

3-1-101. The several courts of this state.
3-1-102. Courts of record.
3-1-103 through 3-1-110 reserved.
3-1-111. Powers respecting conduct of business.
3-1-112. Rules for courts of record.
3-1-113. Means to carry jurisdiction into effect.
3-1-114. Definitions.
3-1-115. Electronic filing and storage of documents — rules.

Part 2 — Seals of Courts

3-1-201. What courts have seals.
3-1-202. Seal of supreme court.
3-1-203. Seals of district courts.
3-1-204. Clerk of court to keep seal.
3-1-205. Seal of municipal court.
3-1-206. Documents requiring seals.

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3-1-302. Nonjudicial day.
3-1-303. Adjournments from nonjudicial days.
3-1-304. Adjournment for absence of judge.
3-1-305. Adjournment until next regular term.
3-1-306 through 3-1-310 reserved.
3-1-311. Proceedings not affected by vacancy in office.
3-1-312. Sittings of court to be public.
3-1-313. Sittings of court — when private.
3-1-314. Proceedings to be in English language.
3-1-315. Abbreviations and figures.
3-1-316. Repealed.
3-1-317. User surcharge for court information technology — exception.

Part 4 — Powers of Judicial Officers

3-1-401. Powers of judges out of court.
3-1-402. Powers of judicial officers as to conduct of proceedings.

3-1-403. Power to punish for contempt.
3-1-404. Taking acknowledgments and affidavits.
3-1-405. Certificate of authenticity of justice's court's certificate of acknowledgment.

Part 5 — Contempts

3-1-501. What acts or omissions are contempts.
3-1-502. Order refused — subsequent applications prohibited.
3-1-503. Effect of violation.
3-1-504. Reentry on property after eviction.
3-1-505 through 3-1-510 reserved.
3-1-511. Procedure — contempt committed in the presence of the court.
3-1-512. Procedure — contempt not in presence of the court.
3-1-513. Warrant of attachment or commitment.
3-1-514. Endorsement allowing bail on warrant.
3-1-515. Arrest and detention by sheriff.
3-1-516. Bail bond — form and conditions of.
3-1-517. Return of warrant and undertaking.
3-1-518. Hearing.
3-1-519. Penalty.
3-1-520. Imprisonment to compel performance.
3-1-521. Proceedings when party fails to appear.
3-1-522. Illness sufficient excuse — confinement under arrest.
3-1-523. Judgment and orders in contempt cases final.

Part 6 — Restrictions on Judicial Officers

3-1-601. Certain officers not to practice law or administer estates.
3-1-602. Restrictions on justices of the peace practicing law or taking claims for collection.
3-1-603. No judicial officer of court of record to have partner practicing law.
3-1-604. Restrictions on municipal court judges.
3-1-605. Restrictions on judicial officers after term has expired.
3-1-606. Justice of the peace or constable not to purchase judgment.
3-1-607. Supreme court justice or district court judge candidacy for nonjudicial office — resignation required.
3-1-608. Forced vacancy.

Part 7 — Court Administrator

3-1-701. Office of court administrator — appointment and term of office.
3-1-702. Duties.
3-1-703. Cooperation of court officers.

Part 8 — Disqualification and Substitution of Judges Supreme Court Rule

3-1-801. Superseded.
3-1-802. Superseded.
3-1-803. Disqualification of judges — all courts.
3-1-804. Substitution of district judges.
3-1-805. Disqualification for cause.

Part 9 reserved

Part 10 — Judicial Nomination Commission

3-1-1001. Creation, composition, and function of commission.
3-1-1002. Staggered terms of members.
3-1-1003. Vacancies.
3-1-1004. No compensation — travel expenses.
3-1-1005. Commission members not eligible for judicial office.
3-1-1006. Secretary — election and duties.
3-1-1007. Commission to make rules — confidentiality of proceedings.
3-1-1008. Quorum.
3-1-1009. Investigation by commission — application for consideration.

3-1-1010. Lists submitted to governor and chief justice — report on proceedings.
3-1-1011. Governor or chief justice of the supreme court to nominate from list.
3-1-1012. When governor fails to nominate.
3-1-1013. Senate confirmation — exception — nomination in the interim — appointment contingent on vacancy.
3-1-1014. Duration of appointment — election for remainder of term.

Part 11 — Judicial Standards Commission

3-1-1101. Creation and composition of commission.
3-1-1102. Staggered terms of members.
3-1-1103. Terminated membership — vacancies.
3-1-1104. No compensation — travel expenses.
3-1-1105. Confidential proceedings — rules for commission.
3-1-1106. Investigation of judicial officers — complaint — hearing — recommendations.
3-1-1107. Action by supreme court.
3-1-1108. Nonparticipation of interested judicial officer.
3-1-1109. Interim disqualification of judicial officer.
3-1-1110. Procedure when convicted of crime.
3-1-1111. Orders for retirement or removal.
3-1-1112 through 3-1-1120 reserved.
3-1-1121. Public disclosure required.
3-1-1122. Judge's waiver of confidentiality — hearing made public.
3-1-1123. Public statements by commission.
3-1-1124. Disclosure for judicial selection — appointment or assignment.
3-1-1125. Efficiency and effectiveness — audit authorized.
3-1-1126. Commission report to legislature.

Parts 12 through 14 reserved

Part 15 — Courts of Limited Jurisdiction Training and Certification of Judges

3-1-1501. Definitions.
3-1-1502. Training and certification of judges.
3-1-1503. Exception — temporary certificate.
3-1-1504 and 3-1-1505 reserved.
3-1-1506. Expenses.
3-1-1507. Disqualification.
3-1-1508. Credit toward annual training.

Part 1

Courts — Definitions and General Powers

Part Cross-References

Establishment of court system, Art. VII, Mont. Const.

3-1-101. The several courts of this state. The following are courts of justice of this state:

(1) the court of impeachment, which is the senate;
(2) the supreme court;
(3) the district courts;
(4) the municipal courts;
(5) the justices' courts;
(6) the city courts and such other courts of limited jurisdiction as the legislature may establish in any incorporated city or town.

History: **En. Secs. 2, 6, C. Civ. Proc. 1895; re-en. Secs. 6238, 6240, Rev. C. 1907; re-en. Secs. 8784, 8786, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 33, 36; re-en. Secs. 8784, 8786, R.C.M. 1935; R.C.M. 1947, 93-101, 93-103(part); amd. Sec. 1, Ch. 21, L. 1979; amd. Sec. 5, Ch. 466, L. 1979.**

Cross-References

Establishment of court system, Art. VII, Mont. Const.

Supreme Court, Title 3, ch. 2.

District Court, Title 3, ch. 5.

Municipal Court, Title 3, ch. 6.

Water Court, Title 3, ch. 7.

Justice's Court, Title 3, ch. 10.

City Court, Title 3, ch. 11.

Justice of the Peace as City Judge, 3-11-205.

Impeachment, Title 5, ch. 5, part 4.

3-1-102. Courts of record. The court of impeachment, the supreme court, the district courts, and the municipal courts are courts of record.

History: **En. Sec. 3, C. Civ. Proc. 1895; re-en. Sec. 6239, Rev. C. 1907; re-en. Sec. 8785, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 34; re-en. Sec. 8785, R.C.M. 1935; amd. Sec. 11, Ch. 429, L. 1977; R.C.M. 1947, 93-102.**

3-1-103 through 3-1-110 reserved.

3-1-111. Powers respecting conduct of business. Every court has power to:

(1) preserve and enforce order in its immediate presence;

(2) enforce order in the proceedings before it or before a person or persons empowered to conduct a judicial investigation under its authority;

(3) provide for the orderly conduct of proceedings before it or its officers;

(4) compel obedience to its judgments, orders, and process and to the orders of a judge out of court in an action or proceeding pending therein;

(5) control, in furtherance of justice, the conduct of its ministerial officers and of all other persons in any manner connected with a judicial proceeding before it in every other matter appertaining thereto;

(6) compel the attendance of persons to testify in an action or proceeding pending therein in the cases and manner provided in this code;

(7) administer oaths in an action or proceeding pending therein and in all other cases where it may be necessary in the exercise of its powers and duties;

(8) amend and control its process and orders so as to make them conformable to law and justice.

History: **En. Sec. 452, p. 134, Bannack Stat.; re-en. Sec. 609, p. 159, Cod. Stat. 1871; re-en. Sec. 529, p. 178, L. 1877; re-en. Sec. 529, 1st Div. Rev. Stat. 1879; re-en. Sec. 546, 1st Div. Comp. Stat. 1887; amd. Sec. 110, C. Civ. Proc. 1895; re-en. Sec. 6292, Rev. C. 1907; re-en. Sec. 8844, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 128; re-en. Sec. 8844, R.C.M. 1935; R.C.M. 1947, 93-501.**

Cross-References

Officers who may administer oaths, 1-6-101.

Powers of judicial officers as to conduct of proceedings, 3-1-402.

Power to punish for contempt, 3-1-403.

What acts or omissions are contempts, 3-1-501.

Contempts for which Justice of the Peace may punish, 3-10-401.

Contempts for which City Judge may punish, 3-11-303.

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Power of subpoena issuance, 26-2-102.

3-1-112. Rules for courts of record. (1) Every court of record may make rules, not inconsistent with the laws of this state, for its own government and the government of its officers. Such rules must not impose any tax or charge upon any legal proceedings or give any allowance to any officers for services.

(2) In case of the failure or refusal of any district court to adopt and promulgate rules of court, the supreme court may, upon the application of any interested person, adopt and promulgate rules for the government of such court. When adopted and promulgated, such rules shall remain in full force and effect until modified or repealed by the authority adopting them.

(3) Rules adopted by any court take effect 30 days after their publication.

(4) Any judge who shall fail or refuse to comply with and carry out in good faith the rules of court adopted by the supreme court, as herein provided for, shall be guilty of a contempt of the supreme court.

History: Ap. p. Sec. 111, C. Civ. Proc. 1895; re-en. Sec. 6293, Rev. C. 1907; amd. Sec. 1, Ch. 6, L. 1915; re-en. Sec. 8845, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 129; re-en. Sec. 8845, R.C.M. 1935; Sec. 93-502, R.C.M. 1947; Ap. p. Sec. 112, C. Civ. Proc. 1895; re-en. Sec. 6294, Rev. C. 1907; re-en. Sec. 8846, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 130; re-en. Sec. 8846, R.C.M. 1935; Sec. 93-503, R.C.M. 1947; R.C.M. 1947, 93-502, 93-503.

Cross-References

Local rules, 3-2-704.

Montana Uniform District Court Rules, Title 25, ch. 19.

Rules by District Courts, Rule 83, M.R.Civ.P. (see Title 25, ch. 20).

Noncompliance with lawful process of court — contempt, 45-7-309.

3-1-113. Means to carry jurisdiction into effect. When jurisdiction is, by the constitution or any statute, conferred on a court or judicial officer, all the means necessary for the exercise of such jurisdiction are also given. In the exercise of this jurisdiction, if the course of proceeding is not specifically pointed out by this code, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code.

History: En. Sec. 205, C. Civ. Proc. 1895; re-en. Sec. 6329, Rev. C. 1907; re-en. Sec. 8882, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 187; re-en. Sec. 8882, R.C.M. 1935; R.C.M. 1947, 93-1106; amd. Sec. 2, Ch. 21, L. 1979.

Cross-References

Establishment of court system, Art. VII, Mont. Const.

Disputable presumption that court lawfully exercises jurisdiction, 26-1-602.

3-1-114. Definitions. As used in 3-1-115 and this section, the following definitions apply:

(1) "Document" means all contents in the file or record of any case or matter docketed by a court, including decisions, administrative orders, court records, court books, court minutes and minute books, court dockets, court ledgers, registers of actions, court indexes, and other documents, instruments, or papers required by law to be filed with a court.

(2) "Electronic filing of documents" means the transmission of data to a court by the communication of information that is originally displayed in written form and then converted to digital electronic signals, transformed by computer, and stored by the clerk of the court on microfilm, magnetic tape, optical disc, or other medium.

(3) "Electronic storage of documents" means the recording, storage, retention, maintenance, and reproduction of court documents, using microfilm, microfiche, data processing, computers, or other electronic processes that correctly and legibly store and reproduce documents.

History: En. Sec. 1, Ch. 174, L. 1995.

3-1-115. Electronic filing and storage of documents — rules. (1) The supreme court may make rules establishing procedures for electronic filing of documents and electronic storage of documents.

(2) Courts may, but are not required to, institute procedures for electronic filing of documents and electronic storage of documents to further the efficient administration and operation of the courts. Electronically filed or stored documents may be kept in lieu of any paper documents. Electronic filing of documents and electronic storage of documents must be in conformity with rules adopted by the supreme court.

(3) The provisions of 3-1-114 and this section may not be construed to repeal any other provision of existing law that requires or provides for the maintenance of official written documents, records, dockets, books, ledgers, or proceedings by a court or clerk of the court in those courts that do not institute electronic filing of documents and electronic storage of documents.

(4) The procedures for electronic storage of documents may require but are not limited to the following:

(a) all original documents to be recorded and released into the court's electronic filing and storage system within a specified minimum time period after presentation to the court;

(b) the use of original paper records during the pendency of any legal proceeding;

(c) standards for organizing, identifying, coding, indexing, and reproducing an original document so that an image produced from electronically stored information can be certified as a true and correct copy of the original and can be retrieved rapidly; and

(d) retention of the original documents consistent with other law and security provisions to guard against physical loss, alterations, and deterioration.

History: En. Sec. 2, Ch. 174, L. 1995.

Part 2
Seals of Courts

3-1-201. What courts have seals. Each of the following courts shall have a seal:

(1) the supreme court;

(2) the district courts;

(3) the municipal courts.

History: En. Sec. 462, p. 135, Bannack Stat. re-en. Sec. 585, p. 155, Cod. Stat. 1871; re-en. Sec. 510, p. 174, L. 1877; re-en. Sec. 510, 1st Div. Rev. Stat. 1879; re-en. Sec. 527, 1st Div. Comp. Stat. 1887; amd. Sec. 150, C. Civ. Proc. 1895; re-en. Sec. 6303, Rev. C. 1907; re-en. Sec. 8857, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 147; re-en. Sec. 8857, R.C.M. 1935; R.C.M. 1947, 93-601; amd. Sec. 3, Ch. 21, L. 1979.

Cross-References

Duty of Clerk of Court to keep seal, 3-1-204.

Duty of Supreme Court Clerk to keep seal, 3-2-402.

3-1-202. Seal of supreme court. The seal of the supreme court is circular in form and not less than 1 3⁄4 inches in diameter, on which are engraved the words "Supreme Court, State of Montana", with the word "Seal" in the center thereof, which seal must be procured by the clerk of the supreme court at the expense of the state; and an impression thereof, certified to by the clerk, must be filed with the secretary of state.

History: En. Sec. 1, p. 206, L. 1891; re-en. Sec. 151, C. Civ. Proc. 1895; re-en. Sec. 6304, Rev. C. 1907; re-en. Sec. 8858, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 148; re-en. Sec. 8858, R.C.M. 1935; R.C.M. 1947, 93-602.

Cross-References

Duty of Supreme Court Clerk to keep seal, 3-2-402.

3-1-203. Seals of district courts. The seals of the district courts are circular, not less than 1 3⁄4 inches in diameter, and have in the center the word "Seal" and the following inscription surrounding the same: ".... District Court, ... County, Montana", inserting the number of the district and the name of the county; which seal must be procured by the clerk of the court at the expense of the county and an impression thereof, certified by the clerk, filed with the secretary of state.

History: En. Sec. 2, p. 206, L. 1891; re-en. Sec. 152, C. Civ. Proc. 1895; re-en. Sec. 6305, Rev. C. 1907; re-en. Sec. 8859, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 149; re-en. Sec. 8859, R.C.M. 1935; R.C.M. 1947, 93-603.

Cross-References

Fee for certificate with seal, 25-1-201.

3-1-204. Clerk of court to keep seal. The clerk of the court must keep the seal thereof.

History: En. Sec. 153, C. Civ. Proc. 1895; re-en. Sec. 6306, Rev. C. 1907; re-en. Sec. 8860, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 152; re-en. Sec. 8860, R.C.M. 1935; R.C.M. 1947, 93-604.

Cross-References

Duty of Supreme Court Clerk to keep seal, 3-2-402.

Fee for certificate with seal, 25-1-201.

3-1-205. Seal of municipal court. The municipal court shall have and use a seal, which seal shall be similar to the seal of the district court, except as to the name of the court.

History: En. Sec. 6, Ch. 177, L. 1935; re-en. Sec. 5094.6, R.C.M. 1935; R.C.M. 1947, 11-1706(part).

3-1-206. Documents requiring seals. Unless otherwise specifically required, the seal of a court need not be affixed to any proceeding therein or document except to:

(1) a writ;

(2) the certificate of probate of a will or of the appointment of a personal representative or guardian;

(3) the authentication of a copy of a record or other proceeding of a court or an officer thereof or of a copy of a document on file in the office of the clerk.

History: En. Sec. 464, p. 135, Bannack Stat.; repealed Sec. 751, p. 187, Cod. Stat. 1871; en. Sec. 154, C. Civ. Proc. 1895; re-en. Sec. 6307, Rev. C. 1907; re-en. Sec. 8861, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 153; re-en. Sec. 8861, R.C.M. 1935; R.C.M. 1947, 93-605; amd. Sec. 15, Ch. 575, L. 1981.

Cross-References

Summons to be under seal, Rule 4C, M.R.Civ.P. (see Title 25, ch. 20).

Subpoena to be under seal, Rule 45(a), M.R.Civ.P. (see Title 25, ch. 20).

Part 3
General Rules Regarding Procedure

3-1-301. Days on which courts may be held. Courts of justice may be held and judicial business transacted on any day, except as provided in 3-1-302.

History: En. Sec. 466, p. 136, Bannack Stat.; re-en. Sec. 588, p. 155, Cod. Stat. 1871; re-en. Sec. 513, p. 174, L. 1877; re-en. Sec. 513, 1st Div. Rev. Stat. 1879; re-en. Sec. 530, 1st Div. Comp. Stat. 1887; re-en. Sec. 120, C. Civ. Proc. 1895; re-en. Sec. 6295, Rev. C. 1907; re-en. Sec. 8849, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 133; re-en. Sec. 8849, R.C.M. 1935; R.C.M. 1947, 93-506.

3-1-302. Nonjudicial day. (1) No court may be open nor may any judicial business be transacted on legal holidays, as provided for in 1-1-216, and on a day appointed by the president of the United States or by the governor of this state for a public fast, thanksgiving, or holiday, except for the following purposes:

(a) to give, upon its request, instructions to a jury when deliberating on its verdict;

(b) to receive a verdict or discharge a jury;

(c) for the exercise of the powers of a magistrate in a criminal action or in a proceeding of a criminal nature.

(2) Injunctions, writs of prohibition, and habeas corpus may be issued and served on any day.

History: En. Sec. 467, p. 136, Bannack Stat.; re-en. Sec. 589, p. 155, Cod. Stat. 1871; re-en. Sec. 514, p. 174, L. 1877; re-en. Sec. 514, 1st Div. Rev. Stat. 1879; re-en. Sec. 531, 1st Div. Comp. Stat. 1887; amd. Sec. 121, C. Civ. Proc. 1895; re-en. Sec. 6296, Rev. C. 1907; re-en. Sec. 8850, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 134; re-en. Sec. 8850, R.C.M. 1935; amd. Sec. 14, Ch. 420, L. 1975; amd. Sec. 28, Ch. 344, L. 1977; R.C.M. 1947, 93-507.

Cross-References

Issuance of injunctions and writs of habeas corpus and prohibition on nonjudicial days, 3-5-302.

City Court limitation on business — criminal only, 3-11-101.

3-1-303. Adjournments from nonjudicial days. If any day mentioned in 3-1-302 happens to be the day appointed for the holding or sitting of a court or to which it is adjourned, it must be considered appointed for or adjourned to the next day.

History: En. Sec. 467, p. 136, Bannack Stat.; amd. Sec. 589, p. 155, Cod. Stat. 1871; re-en. Sec. 514, p. 174, L. 1877; re-en. Sec. 514, 1st Div. Rev. Stat. 1879; re-en. Sec. 531, 1st Div. Comp. Stat. 1887; amd. Sec. 122, C. Civ. Proc. 1895; re-en. Sec. 6297, Rev. C. 1907; re-en. Sec. 8851, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 135; re-en. Sec. 8851, R.C.M. 1935; R.C.M. 1947, 93-508.

3-1-304. Adjournment for absence of judge. If no judge attends before noon on the day appointed for the holding or sitting of a court or on a day to which it may have been adjourned, the sheriff or clerk may adjourn the same until the next day at 10 a.m. If no judge attends on that day before noon, the sheriff or clerk may adjourn the same until the following day at the same hour and so on from day to day for 6 days unless the judge, by written order or telegram, directs it to be adjourned to some day certain, fixed in said order or telegram, in which case it must be so adjourned.

History: En. Sec. 589, p. 155, Cod. Stat. 1871; re-en. Sec. 514, p. 174, L. 1877; re-en. Sec. 514, 1st Div. Rev. Stat. 1879; re-en. Sec. 531, 1st Div. Comp. Stat. 1887; amd. Sec.

130, C. Civ. Proc. 1895; re-en. Sec. 6298, Rev. C. 1907; re-en. Sec. 8852, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 139; re-en. Sec. 8852, R.C.M. 1935; R.C.M. 1947, 93-509.

Cross-References

Duty of Supreme Court Clerk to adjourn Supreme Court, 3-2-402.

Sheriff to act as crier of District Court, 3-5-407.

3-1-305. Adjournment until next regular term. If no judge attends for 6 days and no written order or telegram be made or sent as provided in 3-1-304, the sheriff or clerk must adjourn the term until the time appointed for the holding of the next regular term.

History: En. Sec. 589, p. 155, Cod. Stat. 1871; re-en. Sec. 514, p. 174, L. 1877; re-en. Sec. 514, 1st Div. Rev. Stat. 1879; re-en. Sec. 531, 1st Div. Comp. Stat. 1887; amd. Sec. 131, C. Civ. Proc. 1895; re-en. Sec. 6299, Rev. C. 1907; re-en. Sec. 8853, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 140; re-en. Sec. 8853, R.C.M. 1935; R.C.M. 1947, 93-510.

Cross-References

Duty of Supreme Court Clerk to adjourn Supreme Court, 3-2-402.

Sheriff to act as crier of District Court, 3-5-407.

3-1-306 through 3-1-310 reserved.

3-1-311. Proceedings not affected by vacancy in office. No proceeding in any court of justice in an action or special proceeding pending therein is affected by a vacancy in the office of all or any of the judges thereof.

History: En. Sec. 460, p. 135, Bannack Stat.; re-en. Sec. 583, p. 155, Cod. Stat. 1871; re-en. Sec. 508, p. 174, L. 1877; re-en. Sec. 508, 1st Div. Rev. Stat. 1879; re-en. Sec. 525, 1st Div. Comp. Stat. 1887; amd. Sec. 202, C. Civ. Proc. 1895; re-en. Sec. 6326, Rev. C. 1907; re-en. Sec. 8879, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 184; re-en. Sec. 8879, R.C.M. 1935; R.C.M. 1947, 93-1103.

3-1-312. Sittings of court to be public. The sittings of every court of justice must be public, except as provided in 3-1-313.

History: En. Sec. 450, p. 134, Bannack Stat.; re-en. Sec. 607, p. 159, Cod. Stat. 1871; re-en. Sec. 527, p. 178, L. 1877; re-en. Sec. 527, 1st Div. Rev. Stat. 1879; re-en. Sec. 544, 1st Div. Comp. Stat. 1887; re-en. Sec. 100, C. Civ. Proc. 1895; re-en. Sec. 6290, Rev. C. 1907; re-en. Sec. 8847, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 124; re-en. Sec. 8847, R.C.M. 1935; R.C.M. 1947, 93-504.

Cross-References

Trials to be in open court, Rule 77(b), M.R.Civ.P. (see Title 25, ch. 20).

3-1-313. Sittings of court — when private. (1) In an action for dissolution of marriage, criminal conversation, or seduction, the court may direct the trial of any issue of fact joined therein to be private and exclude all persons except the officers of the court, the parties, their witnesses, and counsel.

(2) During the examination of a witness in any cause, the court may, in its discretion, exclude some or all of the other witnesses in the cause.

History: En. Sec. 451, p. 134, Bannack Stat.; re-en. Sec. 608, p. 159, Cod. Stat. 1871; re-en. Sec. 528, p. 178, L. 1877; re-en. Sec. 528, 1st Div. Rev. Stat. 1879; re-en. Sec. 545, 1st Div. Comp. Stat. 1887; amd. Sec. 101, C. Civ. Proc. 1895; re-en. Sec. 6291, Rev. C. 1907; re-en. Sec. 8848, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 125; re-en. Sec. 8848, R.C.M. 1935; amd. Sec. 23, Ch. 33, L. 1977; amd. Sec. 27, Ch. 344, L. 1977; R.C.M. 1947, 93-505.

Cross-References

Exclusion of witness, Rule 615, M.R.Ev. (see Title 26, ch. 10).

Who may sue for whose seduction, 27-1-514.

Cause of action for alienation of affections abolished, 27-1-601.

Privacy of Conciliation Court proceedings, 40-3-116.

3-1-314. Proceedings to be in English language. Every written proceeding in a court of justice in this state must be in the English language, and judicial proceedings must be conducted, preserved, and published in no other.

History: En. Sec. 461, p. 135, Bannack Stat.; re-en. Sec. 584, p. 155, Cod. Stat. 1871; re-en. Sec. 509, p. 174, L. 1877; re-en. Sec. 509, 1st Div. Rev. Stat. 1879; re-en. Sec. 526, 1st Div. Comp. Stat. 1887; amd. Sec. 203, C. Civ. Proc. 1895; re-en. Sec. 6327, Rev. C. 1907; re-en. Sec. 8880, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 185; re-en. Sec. 8880, R.C.M. 1935; R.C.M. 1947, 93-1104.

Cross-References

English as official and primary language of state and local governments, 1-1-510.

3-1-315. Abbreviations and figures. Such abbreviations as are in common use may be used, and numbers may be expressed by figures or numerals in the customary manner.

History: En. Sec. 461, p. 135, Bannack Stat.; re-en. Sec. 584, p. 155, Cod. Stat. 1871; re-en. Sec. 509, p. 174, L. 1877; re-en. Sec. 509, 1st Div. Rev. Stat. 1879; re-en. Sec. 526, 1st Div. Comp. Stat. 1887; amd. Sec. 204, C. Civ. Proc. 1895; re-en. Sec. 6328, Rev. C. 1907; re-en. Sec. 8881, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 186; re-en. Sec. 8881, R.C.M. 1935; R.C.M. 1947, 93-1105.

3-1-316. Repealed. Sec. 13, Ch. 245, L. 1979.

History: En. 93-514 by Sec. 1, Ch. 272, L. 1975; R.C.M. 1947, 93-514.

3-1-317. *(Temporary)* **User surcharge for court information technology — exception.** (1) Except as provided in subsection (2), all courts of original jurisdiction shall impose:

(a) on a defendant in criminal cases, a $5 user surcharge upon conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail;

(b) on the initiating party in civil and probate cases, a $5 user surcharge at the commencement of each action, proceeding, or filing; and

(c) on each defendant or respondent in civil cases, a $5 user surcharge upon appearance.

(2) If a court determines that a defendant in a criminal case or determines pursuant to 25-10-404 that a party in a civil case is unable to pay the surcharge, the court may waive payment of the surcharge imposed by this section.

(3) The surcharge imposed by this section is not a fee or fine and must be imposed in addition to other taxable court costs, fees, or fines. The surcharge may not be used in determining the jurisdiction of any court.

(4) The amounts collected under this section must be forwarded to the state treasurer and deposited in the account established in 3-5-904 for state funding of court information technology. *(Terminates June 30, 1999—sec. 4, Ch. 361, L. 1995.)*

History: En. Sec. 1, Ch. 361, L. 1995.

Part 4

Powers of Judicial Officers

3-1-401. Powers of judges out of court. A justice or judge may exercise out of court all the powers expressly conferred upon a justice or judge, as contradistinguished from the court.

History: **En. Sec. 190, C. Civ. Proc. 1895; re-en. Sec. 6319, Rev. C. 1907; re-en. Sec. 8872, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 176; re-en. Sec. 8872, R.C.M. 1935; R.C.M. 1947, 93-1001.**

3-1-402. Powers of judicial officers as to conduct of proceedings. Every judicial officer has power to:

(1) preserve and enforce order in his immediate presence and in proceedings before him when he is engaged in the performance of official duty;

(2) compel obedience to his official orders, as provided in this code;

(3) compel the attendance of persons to testify in a proceeding before him in the cases and manner provided in this code;

(4) administer oaths to persons in a proceeding pending before him and in all other cases where it may be necessary in the exercise of his powers and duties.

History: **En. Sec. 191, C. Civ. Proc. 1895; re-en. Sec. 6320, Rev. C. 1907; re-en. Sec. 8873, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 177; re-en. Sec. 8873, R.C.M. 1935; R.C.M. 1947, 93-1002.**

Cross-References

Administration of oaths, 1-6-101.

Powers respecting conduct of business, 3-1-111.

What acts or omissions are contempts, 3-1-501.

Contempts for which Justice of the Peace may punish, 3-10-401.

Contempts for which City Judge may punish, 3-11-303.

Power of subpoena, 26-2-102.

3-1-403. Power to punish for contempt. For the effectual exercise of the powers conferred by 3-1-402, a judicial officer may punish for contempt in the cases provided in this code.

History: **En. Sec. 192, C. Civ. Proc. 1895; re-en. Sec. 6321, Rev. C. 1907; re-en. Sec. 8874, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 178; re-en. Sec. 8874, R.C.M. 1935; R.C.M. 1947, 93-1003.**

Cross-References

Powers respecting conduct of business, 3-1-111.

What acts or omissions are contempts, 3-1-501.

Contempts for which Justice of the Peace may punish, 3-10-401.

Punishment for contempt, 3-10-404, 45-1-104, 45-7-308.

Contempts for which City Judge may punish, 3-11-303.

Criminal contempt, 45-7-309.

3-1-404. Taking acknowledgments and affidavits. Each of the justices of the supreme court and judges of the district courts has power in any part of the state, and every justice of the peace within his county, to take and certify:

(1) the proof and acknowledgment of a conveyance of real property or of any other written instrument;

(2) the acknowledgment of satisfaction of a judgment of any court;

(3) an affidavit or deposition to be used in this state.

History: **En. Sec. 459, Bannack Stat.; re-en. Sec. 582, p. 155, Cod. Stat. 1871; re-en. Sec. 507, p. 174, L. 1877; re-en. Sec. 507, 1st Div. Rev. Stat. 1879; re-en. Sec. 524, 1st Div. Comp. Stat. 1887; amd. Sec. 193, C. Civ. Proc. 1895; re-en. Sec. 6322, Rev. C. 1907; re-en. Sec. 8875, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 179; re-en. Sec. 8875, R.C.M. 1935; R.C.M. 1947, 93-1004.**

Cross-References

Affidavit defined, 26-1-1001.

Power to take and certify affidavits, 26-1-1003 through 26-1-1006.

3-1-405. Certificate of authenticity of justice's court's certificate of acknowledgment. The certificate of proof or acknowledgment, if made before a justice of the peace, when used in any county other than that in which he resides, must be accompanied by a certificate, under the hand and seal of the clerk of the county in which the justice resides, setting forth that such justice, at the time of taking such proof or acknowledgment, was authorized to take the same and that the clerk is acquainted with his handwriting and believes that the signature to the original certificate is genuine.

History: En. Sec. 194, C. Civ. Proc. 1895; re-en. Sec. 6323, Rev. C. 1907; re-en. Sec. 8876, R.C.M. 1921; re-en. Sec. 8876, R.C.M. 1935; R.C.M. 1947, 93-1005.

Cross-References

Power to take and certify affidavits, 26-1-1003 through 26-1-1006.

Part 5
Contempts

Part Cross-References

Powers of judicial officers as to conduct of proceedings, 3-1-402.

Power to punish for contempt, 3-1-403.

Contempts in Justices' Courts, Title 3, ch. 10, part 4.

Contempts in City Courts, 3-11-303.

Certification, filing, and copying of depositions, Rule 30(f), M.R.Civ.P. (see Title 25, ch. 20).

Criminal contempts, 45-7-309.

Acknowledgment of instruments required, 70-21-203.

3-1-501. What acts or omissions are contempts. (1) The following acts or omissions in respect to a court of justice or proceedings in a court of justice are contempts of the authority of the court:

(a) disorderly, contemptuous, or insolent behavior toward the judge while holding the court tending to interrupt the due course of a trial or other judicial proceeding;

(b) a breach of the peace, boisterous conduct, or violent disturbance tending to interrupt the due course of a trial or other judicial proceeding;

(c) misbehavior in office or other willful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner, or other person appointed or elected to perform a judicial or ministerial service;

(d) deceit or abuse of the process or proceedings of the court by a party to an action or special proceeding;

(e) disobedience of any lawful judgment, order, or process of the court;

(f) assuming to be an officer, attorney, or counsel of a court and acting as such without authority;

(g) rescuing any person or property in the custody of an officer by virtue of an order or process of the court;

(h) unlawfully detaining a witness or party to an action while going to, remaining at, or returning from the court where the action is on the calendar for trial;

(i) any other unlawful interference with the process or proceedings of a court;

(j) disobedience of a subpoena duly served or refusing to be sworn or answer as a witness;

(k) when summoned as a juror in a court, neglecting to attend or serve as a juror or improperly conversing with a party to an action to be tried at the court or with any other person in relation to the merits of the action or receiving a communication from a party or other person in respect to it without immediately disclosing the same to the court;

(l) disobedience by a lower tribunal, magistrate, or officer of the lawful judgment, order, or process of a superior court or proceeding in an action or special proceeding contrary to law after the action or special proceeding is removed from the jurisdiction of the lower tribunal, magistrate, or officer.

(2) Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of the officer.

History: En. Sec. 396, p. 125, Bannack Stat.; re-en. Sec. 455, p. 226, L. 1867; re-en. Sec. 531, p. 144, Cod. Stat. 1871; en. Sec. 566, p. 185, L. 1877; re-en. Sec. 566, 1st Div. Rev. Stat. 1879; re-en. Sec. 584, 1st Div. Comp. Stat. 1887; re-en. Sec. 2170, C. Civ. Proc. 1895; re-en. Sec. 7309, Rev. C. 1907; re-en. Sec. 9908, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1209; re-en. Sec. 9908, R.C.M. 1935; R.C.M. 1947, 93-9801; amd. Sec. 5, Ch. 10, L. 1993.

Cross-References

Powers respecting conduct of business, 3-1-111.

Powers of judicial officers as to conduct of proceedings, 3-1-402.

Power to punish for contempt, 3-1-403.

Contempts for which Justice of the Peace may punish, 3-10-401.

Contempts for which City Judge may punish, 3-11-303.

Failure of juror to attend, 3-15-321, 25-7-206.

Disobedience of court order to deposit or deliver money or convey real property, 25-8-102; Rule 70, M.R.Civ.P. (see Title 25, ch. 20).

Violating judgments requiring the performance of specific acts, 25-13-203.

Disobedience to subpoena or refusal to be sworn, answer as witness, or subscribe affidavit or deposition, Rule 45(f), M.R.Civ.P. (see Title 25, ch. 20); 26-2-104.

Failure to obey child support order, 40-6-117.

Criminal contempt, 45-7-309.

Disobedience of subpoena issued on behalf of Environmental Quality Council, 75-1-312.

3-1-502. Order refused — subsequent applications prohibited. (1) If an application for an order, made to a judge of a court in which the action or proceeding is pending, is refused in whole or in part or is granted conditionally, no subsequent application for the same order shall be made to any other judge, except of a higher court.

(2) Nothing in this section refers to motions refused for informality in the papers or proceedings necessary to obtain the order or to motions refused with liberty to renew the same.

History: En. Sec. 457, p. 135, Bannack Stat.; re-en. Sec. 614, p. 159, Cod. Stat. 1871; re-en. Sec. 534, p. 179, L. 1877; re-en. Sec. 534, 1st Div. Rev. Stat. 1879; re-en. Sec. 551, 1st Div. Comp. Stat. 1887; amd. Sec. 200, C. Civ. Proc. 1895; re-en. Sec. 6324, Rev. C. 1907; re-en. Sec. 8877, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 182; re-en. Sec. 8877, R.C.M. 1935; R.C.M. 1947, 93-1101.

3-1-503. Effect of violation. A violation of 3-1-502 may be punished as a contempt. An order made contrary thereto may be revoked by the judge who made it or vacated by a judge of the court in which the action or proceeding is pending.

History: En. Sec. 458, p. 135, Bannack Stat.; re-en. Sec. 615, p. 159, Cod. Stat. 1871; re-en. Sec. 535, p. 179, L. 1877; re-en. Sec. 535, 1st Div. Rev. Stat. 1879; re-en. Sec. 552, 1st Div. Comp. Stat. 1887; amd. Sec. 201, C. Civ. Proc. 1895; re-en. Sec. 6325, Rev. C. 1907; re-en. Sec. 8878, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 183; re-en. Sec. 8878, R.C.M. 1935; R.C.M. 1947, 93-1102.

3-1-504. Reentry on property after eviction. Every person dispossessed of or ejected from or out of any real property by the judgment or process of any court of competent jurisdiction and who, not having right so to do, reenters into or upon or takes possession of any such real property or induces or procures any person not having a right so to do or aids or abets him therein is guilty of a contempt of the court by which such judgment was rendered or from which such process issued. Upon conviction for such contempt, the court or justice of the peace must immediately issue an alias process directed to the proper officer and requiring him to restore the party entitled to the possession of such property, under the original judgment or process, to such possession.

History: En. Sec. 567, p. 186, L. 1877; re-en. Sec. 567, 1st Div. Rev. Stat. 1879; re-en. Sec. 585, 1st Div. Comp. Stat. 1887; re-en. Sec. 2171, C. Civ. Proc. 1895; re-en. Sec. 7310, Rev. C. 1907; re-en. Sec. 9909, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1210; re-en. Sec. 9909, R.C.M. 1935; R.C.M. 1947, 93-9802.

Cross-References

Termination of rental agreement by landlord, 70-24-422.

Reentry by landlord, 70-27-106.

3-1-505 through 3-1-510 reserved.

3-1-511. Procedure — contempt committed in the presence of the court. When a contempt is committed in the immediate view and presence of the court or judge at chambers, it may be punished summarily, for which an order must be made reciting the facts as occurring in such immediate view and presence and adjudging that the person proceeded against is thereby guilty of a contempt and that he be punished as therein prescribed.

History: En. Sec. 397, p. 125, Bannack Stat.; en. Sec. 456, p. 226, L. 1867; re-en. Sec. 532, p. 145, Cod. Stat. 1871; re-en. Sec. 568, p. 186, L. 1877; re-en. Sec. 568, 1st Div. Rev. Stat. 1879; re-en. Sec. 586, 1st Div. Comp. Stat. 1887; amd. Sec. 2172, C. Civ. Proc. 1895; re-en. Sec. 7311, Rev. C. 1907; re-en. Sec. 9910, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1211; re-en. Sec. 9910, R.C.M. 1935; R.C.M. 1947, 93-9803(part).

Cross-References

Contempt committed in presence of Justice of the Peace, 3-10-402.

3-1-512. Procedure — contempt not in presence of the court. When the contempt is not committed in the immediate view and presence of the court or judge at chambers, an affidavit of the facts constituting the contempt or a statement of the facts by the referees or arbitrators or other judicial officer shall be presented to the court or judge.

History: En. Sec. 397, p. 125, Bannack Stat.; en. Sec. 456, p. 226, L. 1867; re-en. Sec. 532, p. 145, Cod. Stat. 1871; re-en. Sec. 568, p. 186, L. 1877; re-en. Sec. 568, 1st Div. Rev. Stat. 1879; re-en. Sec. 586, 1st Div. Comp. Stat. 1887; amd. Sec. 2172, C. Civ. Proc. 1895; re-en. Sec. 7311, Rev. C. 1907; re-en. Sec. 9910, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1211; re-en. Sec. 9910, R.C.M. 1935; R.C.M. 1947, 93-9803(part).

Cross-References

Contempt not in presence of Justice's Court, 3-10-403.

3-1-513. Warrant of attachment or commitment. When the contempt is not committed in the immediate view and presence of the court or judge, a warrant of attachment may be issued to bring the person charged to answer or, without a previous arrest, a warrant of commitment may, upon notice or upon an order to show cause, be granted. No warrant of commitment can be issued without such previous attachment to answer or notice or order to show cause.

History: **En. Sec. 457, p. 226, L. 1867; re-en. Sec. 533, p. 145, Cod. Stat. 1871; re-en. Sec. 568, p. 186, L. 1877; re-en. Sec. 568, 1st Div. Rev. Stat. 1879; re-en. Sec. 586, 1st Div. Comp. Stat. 1887; re-en. Sec. 2173, C. Civ. Proc. 1895; re-en. Sec. 7312, Rev. C. 1907; re-en. Sec. 9911, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1212; re-en. Sec. 9911, R.C.M. 1935; R.C.M. 1947, 93-9804.**

Cross-References

Contempt committed outside presence of Justice of the Peace, 3-10-403.

3-1-514. Endorsement allowing bail on warrant. Whenever a warrant of attachment is issued pursuant to this part, the court or judge must direct, by an endorsement on such warrant, that the person charged may be left to bail for his appearance in an amount to be specified in such endorsement.

History: **En. Sec. 458, p. 226, L. 1867; re-en. Sec. 534, p. 145, Cod. Stat. 1871; re-en. Sec. 569, p. 186, L. 1877; re-en. Sec. 569, 1st Div. Rev. Stat. 1879; re-en. Sec. 587, 1st Div. Comp. Stat. 1887; re-en. Sec. 2174, C. Civ. Proc. 1895; re-en. Sec. 7313, Rev. C. 1907; re-en. Sec. 9912, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1213; re-en. Sec. 9912, R.C.M. 1935; R.C.M. 1947, 93-9805.**

Cross-References

Arrest for contempt not in presence of Justice of the Peace, 3-10-403.

3-1-515. Arrest and detention by sheriff. Upon executing the warrant of attachment, the sheriff must keep the person in custody, bring him before the court or judge, and detain him until an order be made in the premises unless the person arrested entitle himself to be discharged as provided in 3-1-516.

History: **En. Sec. 459, p. 226, L. 1867; re-en. Sec. 535, p. 145, Cod. Stat. 1871; re-en. Sec. 570, p. 186, L. 1877; re-en. Sec. 570, 1st Div. Rev. Stat. 1879; re-en. Sec. 588, 1st Div. Comp. Stat. 1887; re-en. Sec. 2175, C. Civ. Proc. 1895; re-en. Sec. 7314, Rev. C. 1907; re-en. Sec. 9913, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1214; re-en. Sec. 9913, R.C.M. 1935; R.C.M. 1947, 93-9806.**

Cross-References

Arrest for contempt not in presence of Justice of the Peace, 3-10-403.

3-1-516. Bail bond — form and conditions of. When a direction to let the person arrested to bail is contained in the warrant of attachment or endorsed thereon, he must be discharged from the arrest upon executing and delivering to the officer, at any time before the return day of the warrant, a written undertaking, with two sufficient sureties, to the effect that the person arrested will appear on the return of the warrant and abide the order of the court or judge thereupon or they will pay, as may be directed, the sum specified in the warrant or ordered by court or judge.

History: **En. Sec. 460, p. 227, L. 1867; re-en. Sec. 536, p. 145, Cod. Stat. 1871; re-en. Sec. 570, p. 187, L. 1877; re-en. Sec. 570, 1st Div. Rev. Stat. 1879; re-en. Sec. 588, 1st Div. Comp. Stat. 1887; re-en. Sec. 2176, C. Civ. Proc. 1895; re-en. Sec. 7315, Rev. C. 1907; re-en. Sec. 9914, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1215; re-en. Sec. 9914, R.C.M. 1935; R.C.M. 1947, 93-9807.**

Cross-References

Bailable persons, Art. II, sec. 21, Mont. Const.

Arrest for contempt not in presence of Justice of the Peace, 3-10-403.

3-1-517. Return of warrant and undertaking. The officer must return the warrant of arrest and undertaking, if any, received by him from the person arrested by the return day specified therein.

History: En. Sec. 461, p. 227, L. 1867; re-en. Sec. 537, p. 145, Cod. Stat. 1871; re-en. Sec. 571, p. 187, L. 1877; re-en. Sec. 571, 1st Div. Rev. Stat. 1879; re-en. Sec. 589, 1st Div. Comp. Stat. 1887; re-en. Sec. 2177, C. Civ. Proc. 1895; re-en. Sec. 7316, Rev. C. 1907; re-en. Sec. 9915, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1216; re-en. Sec. 9915, R.C.M. 1935; R.C.M. 1947, 93-9808.

Cross-References

Arrest for contempt not in presence of Justice of the Peace, 3-10-403.

3-1-518. Hearing. When the person arrested has been brought up or appeared, the court or judge must proceed to investigate the charge, must hear any answer which the person arrested may make to the same, and may examine witnesses for or against him, for which an adjournment may be had from time to time, if necessary.

History: En. Sec. 399, p. 126, Bannack Stat.; amd. Sec. 462, p. 227, L. 1867; re-en. Sec. 538, p. 145, Cod. Stat. 1871; re-en. Sec. 572, p. 187, L. 1877; re-en. Sec. 572, 1st Div. Rev. Stat. 1879; re-en. Sec. 590, 1st Div. Comp. Stat. 1887; re-en. Sec. 2178, C. Civ. Proc. 1895; re-en. Sec. 7317, Rev. C. 1907; re-en. Sec. 9916, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1217; re-en. Sec. 9916, R.C.M. 1935; R.C.M. 1947, 93-9809.

Cross-References

Contempt not in presence of Justice of the Peace, 3-10-403.

3-1-519. Penalty. Upon the answer and evidence taken, the court or judge must determine whether the person proceeded against is guilty of the contempt charged. If it be adjudged that he is guilty of the contempt, a fine may be imposed on him not exceeding $500 or he may be imprisoned not exceeding 5 days, or both.

History: En. Sec. 463, p. 227, L. 1867; re-en. Sec. 539, p. 145, Cod. Stat. 1871; re-en. Sec. 573, p. 188, L. 1877; re-en. Sec. 573, 1st Div. Rev. Stat. 1879; re-en. Sec. 591, 1st Div. Comp. Stat. 1887; amd. Sec. 2179, C. Civ. Proc. 1895; re-en. Sec. 7318, Rev. C. 1907; re-en. Sec. 9917, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1218; re-en. Sec. 9917, R.C.M. 1935; R.C.M. 1947, 93-9810.

3-1-520. Imprisonment to compel performance. When the contempt consists in the omission to perform an act which is yet in the power of the person to perform, he may be imprisoned until he shall have performed it. In that case, the act must be specified in the warrant of commitment.

History: En. Sec. 400, p. 126, Bannack Stat.; re-en. Sec. 464, p. 227, L. 1867; re-en. Sec. 540, p. 146, Cod. Stat. 1871; re-en. Sec. 574, p. 188, L. 1877; re-en. Sec. 574, 1st Div. Rev. Stat. 1879; re-en. Sec. 592, 1st Div. Comp. Stat. 1887; re-en. Sec. 2180, C. Civ. Proc. 1895; re-en. Sec. 7319, Rev. C. 1907; re-en. Sec. 9918, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1219; re-en. Sec. 9918, R.C.M. 1935; R.C.M. 1947, 93-9811.

Cross-References

Arrest for contempt not in presence of Justice of the Peace, 3-10-403.

3-1-521. Proceedings when party fails to appear. When the warrant of arrest has been returned served, if the person arrested does not appear on the return day, the court or judge may issue another warrant of arrest or may order the undertaking to be prosecuted, or both. If the undertaking be prosecuted, the measure of damages in the action is the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the warrant was issued and the costs of the proceeding.

History: En. Sec. 467, p. 227, L. 1867; re-en. Sec. 542, p. 146, Cod. Stat. 1871; re-en. Sec. 576, p. 188, L. 1877; re-en. Sec. 576, 1st Div. Rev. Stat. 1879; re-en. Sec. 594, 1st Div. Comp. Stat. 1887; re-en. Sec. 2181, C. Civ. Proc. 1895; re-en. Sec. 7320, Rev. C. 1907; re-en. Sec. 9919, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1220; re-en. Sec. 9919, R.C.M. 1935; R.C.M. 1947, 93-9812.

Cross-References

Arrest for contempt not in presence of Justice of the Peace, 3-10-403.

3-1-522. Illness sufficient excuse — confinement under arrest. (1) Whenever by the provisions of this part an officer is required to keep a person arrested on a warrant of attachment in custody and to bring him before a court or judge, the inability, from illness or otherwise, of the person to attend is sufficient excuse for not bringing him up.

(2) The officer must not confine a person arrested upon a warrant in a prison or otherwise restrain him of personal liberty, except so far as may be necessary to secure his personal attendance.

History: En. Sec. 467, p. 227, L. 1867; re-en. Sec. 543, p. 146, Cod. Stat. 1871; re-en. Sec. 577, p. 188, L. 1877; re-en. Sec. 577, 1st Div. Rev. Stat. 1879; re-en. Sec. 595, 1st Div. Comp. Stat. 1887; re-en. Sec. 2182, C. Civ. Proc. 1895; re-en. Sec. 7321, Rev. C. 1907; re-en. Sec. 9920, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1221; re-en. Sec. 9920, R.C.M. 1935; R.C.M. 1947, 93-9813.

Cross-References

Arrest for contempt not in presence of Justice of the Peace, 3-10-403.

3-1-523. Judgment and orders in contempt cases final. The judgment and orders of the court or judge made in cases of contempt are final and conclusive. There is no appeal, but the action of a district court or judge can be reviewed on a writ of certiorari by the supreme court or a judge thereof and the action of a justice of the peace or other court of limited jurisdiction by the district court or judge of the county in which such justice or judge of such court of limited jurisdiction resides.

History: En. Sec. 468, p. 228, L. 1867; amd. Sec. 544, p. 146, Cod. Stat. 1871; re-en. Sec. 578, p. 188, L. 1877; re-en. Sec. 578, 1st Div. Rev. Stat. 1879; re-en. Sec. 596, 1st Div. Comp. Stat. 1887; en. Sec. 2183, C. Civ. Proc. 1895; re-en. Sec. 7322, Rev. C. 1907; re-en. Sec. 9921, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1222; re-en. Sec. 9921, R.C.M. 1935; R.C.M. 1947, 93-9814; amd. Sec. 6, Ch. 466, L. 1979.

Cross-References

Powers of Supreme Court Justices individually, 3-2-212.

Contempt not in presence of Justice of the Peace, 3-10-403.

Writ of review in proceedings for contempt, 27-25-102.

Part 6

Restrictions on Judicial Officers

3-1-601. Certain officers not to practice law or administer estates. (1) Except as provided in 3-1-604 and except for a judge pro tempore, no justice or judge of a court of record or clerk of any court may practice law in any court in this state or act as attorney, agent, or solicitor in the prosecution of any claim or application for lands, pensions, or patent rights or other proceedings before any department of the state or general government or any court of the United States during his continuance in office.

(2) Neither the court administrator nor any assistant may practice law in any of the courts of this state while holding his position.

(3) No justice or judge of a court of record, except a judge pro tempore, may act as administrator or executor of any estate for compensation.

History: (1), (3)En. Secs. 454, 455, p. 134, Bannack Stat.; re-en. Secs. 611, 612, p. 159, Cod. Stat. 1871; re-en. Secs. 531, 532, p. 179, L. 1877; re-en. Secs. 531, 532, 1st Div. Rev. Stat. 1879; re-en. Secs. 548, 549, 1st Div. Comp. Stat. 1887; re-en. Sec. 181, C. Civ. Proc. 1895; re-en. Sec. 6316, Rev. C. 1907; re-en. Sec. 8869, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 171; re-en. Sec. 8869, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1963; Sec. 93-902, R.C.M. 1947; (2)En. 82-511 by Sec. 2, Ch. 396, L. 1977; Sec. 82-511, R.C.M. 1947; R.C.M. 1947, 82-511, 93-902(part); amd. Sec. 4, Ch. 21, L. 1979; amd. Sec. 1, Ch. 415, L. 1983; amd. Sec. 7, Ch. 663, L. 1987.

Cross-References

Judges pro tempore — special masters — scope of authority in criminal and civil cases, 3-5-113.

Clerk, Sheriff, and Coroner not to practice, 37-61-203.

3-1-602. Restrictions on justices of the peace practicing law or taking claims for collection. (1) Except as provided in subsection (2), a justice of the peace may not:

(a) practice law;

(b) draw contracts, conveyances, or other legal instruments or documents;

(c) take any claim or bill for collection or act as a collection agent in any sense; or

(d) perform any legal duties other than those prescribed by law as his official duties in the conduct of cases and proceedings in his court.

(2) A justice of the peace who is an attorney and who is admitted to practice law before the supreme court of the state of Montana may engage in the general practice of law and practice law in all courts in the state of Montana, except that such a justice, his law partner or associate, or a member, associate, or employee of a firm of which he is a member may not represent a party involved in a case which is filed or tried in his court or in any justice's court located in the same county as his court or which is appealed from such a court.

(3) A justice of the peace who violates any of the provisions of this section is guilty of malfeasance in office and shall be removed from his office of justice of the peace and thereafter be disqualified from holding such office.

History: En. Sec. 3, p. 92, L. 1901; re-en. Sec. 3114, Rev. C. 1907; re-en. Sec. 4863, R.C.M. 1921; re-en. Sec. 4863, R.C.M. 1935; amd. Sec. 1, Ch. 228, L. 1959; amd. Sec. 13, Ch. 344, L. 1977; R.C.M. 1947, 16-3605.

Cross-References

Removal and discipline of judges, Art. VII, sec. 11, Mont. Const.

Disqualification and substitution of judges — Supreme Court rule, Title 3, ch. 1, part 8.

When Acting Justice of the Peace called in, 3-10-231.

Law partners not to appear on opposite sides, 37-61-414.

3-1-603. No judicial officer of court of record to have partner practicing law. (1) Except as provided in subsection (2), no judicial officer of a court of record may have a partner acting as attorney or counsel in any court of this state.

(2) A partner of either a municipal court judge or a judge pro tempore may act as attorney or counsel in any court of this state except the court of his partner.

History: En. Sec. 456, p. 135, Bannack Stat.; re-en. Sec. 613, p. 159, Cod. Stat. 1871; re-en. Sec. 533, p. 179, L. 1877; re-en. Sec. 533, 1st Div. Rev. Stat. 1879; re-en. Sec. 550, 1st Div. Comp. Stat. 1887; amd. Sec. 182, C. Civ. Proc. 1895; re-en. Sec. 6317, Rev. C. 1907; re-en. Sec. 8870, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 172; re-en. Sec. 8870, R.C.M. 1935; amd. Sec. 33, Ch. 344, L. 1977; R.C.M. 1947, 93-903; amd. Sec. 2, Ch. 415, L. 1983; amd. Sec. 8, Ch. 663, L. 1987.

3-1-604. Restrictions on municipal court judges. No municipal court judge may practice law before his own municipal court or hold office in a political party during his term of office.

History: En. 11-1704.1 by Sec. 4, Ch. 429, L. 1977; R.C.M. 1947, 11-1704.1; amd. Sec. 3, Ch. 415, L. 1983.

3-1-605. Restrictions on judicial officers after term has expired. A judicial officer as defined in 1-1-202, after the expiration of his term of office, may not act as attorney or counsel in any action or special proceeding which has been before him in his official character.

History: En. Sec. 183, C. Civ. Proc. 1895; re-en. Sec. 6318, Rev. C. 1907; re-en. Sec. 8871, R.C.M. 1921; re-en. Sec. 8871, R.C.M. 1935; R.C.M. 1947, 93-904; amd. Sec. 5, Ch. 21, L. 1979.

3-1-606. Justice of the peace or constable not to purchase judgment. (1) A justice of the peace may not purchase or be interested in the purchase of any judgment or part thereof on his docket or on any docket in his possession. A constable may not purchase or be interested in the purchase of any judgment or part thereof on the docket of a justice of the peace of the county of which he is a constable or on a docket in the possession of such a justice.

(2) Violation of subsection (1) is a misdemeanor.

History: En. Sec. 113, p. 205, Bannack Stat.; re-en. Sec. 126, p. 298, Cod. Stat. 1871; re-en. Sec. 126, 4th Div. Rev. Stat. 1879; re-en. Sec. 135, 4th Div. Comp. Stat. 1887; amd. Sec. 197, Pen. C. 1895; re-en. Sec. 8216, Rev. C. 1907; re-en. Sec. 10860, R.C.M. 1921; Cal. Pen. C. Sec. 97; re-en. Sec. 10860, R.C.M. 1935; Sec. 94-808, R.C.M. 1947; redes. 16-3607 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 5, Ch. 253, L. 1975; amd. Sec. 14, Ch. 344, L. 1977; R.C.M. 1947, 16-3607.

Cross-References

Punishment for misdemeanor when no penalty specified, 46-18-212.

3-1-607. Supreme court justice or district court judge candidacy for nonjudicial office — resignation required. (1) If a person occupying the office of chief justice or associate justice of the supreme court or judge of a district court of the state of Montana becomes a candidate for election to any elective office under the laws of the state of Montana other than a judicial position, he shall immediately, and in any event at or before the time when he must file as a candidate for such office in any primary or special or general election, resign from his office of chief justice, associate justice, or district judge.

(2) The resignation becomes effective immediately upon its delivery to the proper officer or superior.

(3) The resignation requirement applies except when the person is a bona fide candidate for reelection to the identical office then occupied by him or for another judicial position.

History: En. Sec. 1, Ch. 139, L. 1957; amd. Sec. 21, Ch. 344, L. 1977; R.C.M. 1947, 93-219(1); amd. Sec. 5, Ch. 3, L. 1985.

Cross-References

Forfeiture of judicial position by filing for elective public office, Art. VII, sec. 10, Mont. Const.

Investigation of judicial officers, 3-1-1106 through 3-1-1111, 3-1-1121 through 3-1-1126.

3-1-608. Forced vacancy. In the event of a failure to resign, the office of chief justice, associate justice, or district judge automatically becomes vacant and the former occupant has no further right, power, or authority therein for any purpose and no right to any emoluments thereof, notwithstanding the fact that a successor is not appointed or elected. The vacancy becomes operative to deprive the person of the emoluments of the office in order to carry out the policy of this section and 3-1-607.

History: En. Sec. 1, Ch. 139, L. 1957; amd. Sec. 21, Ch. 344, L. 1977; R.C.M. 1947, 93-219(2).

Cross-References

Selection of Supreme Court Justices and District Court Judges, Art. VII, sec. 8, Mont. Const.

Investigation of judicial officers, 3-1-1106 through 3-1-1111, 3-1-1121 through 3-1-1126.

Election of Supreme Court Justices, 3-2-101.

Election of District Court Judges, 3-5-201.

Part 7
Court Administrator

Part Cross-References

Fiscal administration for payment of District Court expenses, 3-5-902.

3-1-701. Office of court administrator — appointment and term of office. There is established the office of court administrator. The supreme court shall appoint a court administrator. The court administrator shall hold his position at the pleasure of the court.

History: En. 82-510 by Sec. 1, Ch. 396, L. 1977; R.C.M. 1947, 82-510.

3-1-702. Duties. The court administrator is the administrative officer of the court. Under the direction of the supreme court, the court administrator shall:

(1) prepare and present judicial budget requests to the legislature;

(2) collect, compile, and report statistical and other data relating to the business transacted by the courts and provide the information to the legislature on request;

(3) recommend to the supreme court improvements in the judiciary;

(4) administer state funding for district courts as provided in chapter 5, part 9; and

(5) perform other duties that the supreme court may assign.

History: En. 82-512 by Sec. 3, Ch. 396, L. 1977; R.C.M. 1947, 82-512; amd. Sec. 13, Ch. 112, L. 1991; amd. Sec. 1, Ch. 704, L. 1991; amd. Sec. 12, Ch. 349, L. 1993.

Cross-References

Inclusion of judicial budget requests in Governor's budget, 17-7-122.

3-1-703. Cooperation of court officers. All court officers, including clerks of district courts, shall comply with requests made by the court administrator for information and statistical and financial data bearing on the business transacted by the courts.

History: En. 82-513 by Sec. 4, Ch. 396, L. 1977; R.C.M. 1947, 82-513.

Part 8

Disqualification and Substitution of Judges Supreme Court Rule

Part Compiler's Comments

Former Rules Superseded — Effective Dates: Supreme Court Order dated June 29, 1981, provided, in part, as follows:

"By the authority of Article VII, Section 2, of the 1972 Montana Constitution, this rule supersedes and is to be used to the exclusion of the rule on disqualification and substitution of judges adopted by Supreme Court Order dated December 29, 1976, and published as section 3-1-801, MCA.

This rule shall take effect on July 1, 1981."

Supreme Court Order dated June 17, 1987, provided, in part, as follows:

"By the authority of Article VII, Section 2, of the 1972 Montana Constitution, this rule supersedes and is to be used to the exclusion of the rule on disqualification and substitution of judges adopted by Supreme Court Order dated June 29, 1981, and published as sections 3-1-801 and 3-1-802, MCA.

This rule shall take effect on September 1, 1987."

Effect of Publication: Section 2, Ch. 1, L. 1979, which adopted the MCA, provided that publication of a Supreme Court Rule is done for the benefit of code users. The publication of this section should not be construed as a legislative attempt to readopt or promulgate the rule.

Part Cross-References

Removal from office, 3-1-602.

District Court presided over by judge of other district, 3-5-111.

Municipal Court Judge pro tem — disqualification, 3-6-204.

Disqualification of Water Judge or master, 3-7-402.

When Acting Justice of the Peace called in, 3-10-231.

Expenses of Acting Justice of the Peace, 3-10-234.

When substitute for City Judge called in, 3-11-203.

Procedure, Rule 12(b), M.R.Civ.P. (see Title 25, ch. 20).

3-1-801. Superseded. Sup. Ct. Ord. June 29, 1981.

History: En. Sup. Ct. Ord. dated Dec. 29, 1976; 34 St. Rep. 26; superseded, Sup. Ct. Ord. dated June 29, 1981.

3-1-802. Superseded. Sup. Ct. Order June 17, 1987.

History: En. Sup. Ct. Ord. dated June 29, 1981; superseded, Sup. Ct. Ord. dated June 17, 1987.

3-1-803. Disqualification of judges — all courts.

DISQUALIFICATION OF JUDGES

This section shall, in its application, apply to all courts listed in section 3-1-101 except a court of impeachment in the state senate.

Any justice, judge, justice of the peace, municipal court judge or city court judge must not sit or act in any action or proceeding:

1. To which he is a party, or in which he is interested.
2. When he is related to either party or any attorney or member of a firm of attorneys of record for a party by consanguinity or affinity within the fourth degree, computed according to the rules of law;
3. When he has been attorney or counsel in the action or proceeding for any party or when sitting in a case on appeal he as a judge in the lower court rendered or made the judgment, order, or decision appealed from.

History: En. Sup. Ct. Ord. dated June 17, 1987; amd. July 29, 1987; amd. Sup. Ct. Ord. Sept. 13, 1988, eff. Sept. 13, 1988.

3-1-804. Substitution of district judges.

SUBSTITUTION OF DISTRICT JUDGES

This section is limited in its application to district courts and judges presiding therein; it does not include district court judges or other judges sitting as a water court judge, nor a Workers' Compensation Court judge.

1. A motion for substitution of a district judge may be made by any party to a proceeding only in the manner set forth herein. In a civil or criminal case, each adverse party, including the state, is entitled to one substitution of a district judge.

(a) A motion for substitution of a district judge shall be made by filing a written motion with the clerk, as follows:

"The undersigned hereby moves for substitution of District Judge _______ in this case."

A copy of the motion shall be served upon all parties to the proceeding and the clerk shall immediately notify the judge and the first judge in jurisdiction, if there has already been a substitution. After a timely motion has been filed, the substituted judge shall have no power to act on the merits of the cause or to decide legal issues therein, and shall call in another judge. However, a resident district judge who has previously been substituted from the case may agree to set the calendar, draw a jury, conduct all routine matters including arraignments, preliminary pretrial conferences in civil cases, and other matters which do not go to the merits of the case, if the judge in jurisdiction authorizes the same.

(b) The first district judge who has been substituted or disqualified for cause shall have the duty of calling in all subsequent district judges. In a multi-judge court all other judges in that court shall be called, in accordance with that court's internal operating rules, before a judge from another district court is called in. It shall be the duty of the clerk of court to stamp the name of the judge to whom the case is assigned on the face of the initial pleading, complaint, order to show cause, or information, and all copies thereof.

(c) When a judge is assigned to a cause for 30 consecutive days after service of a summons, or 10 consecutive days after service of an order to show cause, information or other initiating document, and no motion for substitution of judge has been filed within said time period, the plaintiff or the party filing the order, information or other initiating document, and the party upon whom service has been made shall no longer have a right of substitution. Any party named in a summons who is subsequently served shall have 30 consecutive days after such service in which to move for a substitution of judge. Any person subsequently served in connection with an order to show cause, information or other initiating document, shall have 10 consecutive days after such service in which to move for a substitution of judge. If the presiding judge removes himself or herself, or a new judge assumes jurisdiction of the cause by virtue of the internal operating rules of a multi-judge court, the right to move for substitution of a judge is reinstated, unless having been previously used in the cause by the moving party, and the time periods shall run anew. After the time period shall have run as to the original parties to the proceeding, no party who is joined or intervenes thereafter shall have any right of substitution, except that one third party defendant who is not an original party in any pending case may have a right of one substitution within 30 consecutive days after the service upon the third party defendant of a third party complaint.

(d) The motion for substitution shall not be effective for any purpose unless a filing fee is paid to the clerk of the district court in the amount set by law. No filing fee is required by law in criminal cases.

(e) Any motion for substitution which is not timely filed is void for all purposes. The judge for whom substitution is sought shall have jurisdiction to determine timeliness, and if the motion for substitution is untimely, shall make an order declaring the motion void.

(f) When a new judge has accepted jurisdiction, the clerk of court shall mail a copy of the assumption of jurisdiction to the original judge and to each attorney or party of record. The certificate of service shall be attached to the assumption of jurisdiction form in the court file.

(g) When a new trial is ordered by the district court, each adverse party shall thereupon be entitled to one motion for substitution of judge in the manner provided herein. When on appeal the judgment or order appealed from is reversed or modified and the cause is remanded to the district court for a new trial, or when a summary judgment or judgment of dismissal is reversed and the cause remanded, each adverse party shall thereupon be entitled to one motion for substitution of judge in the manner provided herein. Such motion must be filed, with the required filing fee in civil cases, within twenty (20) days after a new trial has been ordered by the district court or after the remittitur from the Supreme Court has been filed with the district court. No other right of further substitution shall arise in cases remanded by the supreme court. In criminal cases, no further right of substitution shall arise when the cause is remanded for resentencing.

History: En. Sup. Ct. Ord. dated June 17, 1987; amd. July 29, 1987; amd. Sup. Ct. Ord. Sept. 13, 1988, eff. Sept. 13, 1988; amd. Sup. Ct. Ord. Nov. 20, 1989, eff. Nov. 20, 1989; amd. Sup. Ct. Ord. Nov. 14, 1994, eff. Feb. 1, 1995; amd. Sup. Ct. Ord. Apr. 6, 1995, eff. June 1, 1995.

3-1-805. Disqualification for cause.

DISQUALIFICATION FOR CAUSE

This section is limited in its application to judges presiding in district courts, justice of the peace courts, municipal courts, small claims courts, and city courts.

1. Whenever a party to any proceeding in any court shall file an affidavit alleging facts showing personal bias or prejudice of the presiding judge, such judge shall proceed no further in the cause. If the affidavit is filed against a district judge, the matter shall be referred to the Montana Supreme Court, whereupon the Chief Justice shall assign a district judge to hear the matter. If the affidavit is filed against a judge of a municipal court, justice court, or city court, any district judge presiding in the district of the court involved may appoint either a justice of the peace, a municipal judge or a city court judge, to hear any such proceeding.

(a) The affidavit for disqualification must be filed more than thirty (30) days before the date set for hearing or trial.

(b) The affidavit shall be accompanied by a certificate of counsel of record that the affidavit has been made in good faith. An affidavit will be deemed not to have been made in good faith if it is based solely on rulings in the case made by the challenged judge and from which an appeal could have been taken.

(c) Any affidavit which is not in proper form and which does not allege facts showing personal bias or prejudice may be set aside as void.

(d) The judge appointed to preside at a disqualification proceeding may assess attorneys fees, costs and damages against any party or his attorney who files such disqualification without reasonable cause and thereby hinders, delays or takes unconscionable advantage of any other party, or the court.

History: En. Sup. Ct. Ord. dated June 17, 1987; amd. July 29, 1987; amd. Sup. Ct. Ord. Sept. 13, 1988, eff. Sept. 13, 1988; amd. Sup. Ct. Ord. dated January 6, 1994.

Part 9 reserved

Part 10

Judicial Nomination Commission

Part Cross-References

Selection of Supreme Court Justices and District Court Judges, Art. VII, sec 8, Mont. Const.

3-1-1001. Creation, composition, and function of commission. (1) A judicial nomination commission for the state is created. Its function is to provide the governor with a list of candidates for appointment to fill any vacancy on the supreme court or any district court and to provide the chief justice of the supreme court with a list of candidates for appointment to fill any term or vacancy for the chief water judge pursuant to 3-7-221. The commission shall be composed of seven members as follows:

(a) four lay members who are neither judges nor attorneys, active or retired, who reside in different geographical areas of the state, and each of whom is representative of a different industry, business, or profession, whether actively so engaged or retired, who shall be appointed by the governor;

(b) two attorneys actively engaged in the practice of law, one from that part of the state that is composed of judicial districts 1 through 5, 9, 11, and 18 through 21 and one from that part of the state that is composed of judicial districts 6 through 8, 10, and 12 through 17, who shall be appointed by the supreme court;

(c) one district judge elected by the district judges under an elective procedure initiated and conducted by the supreme court and certified to such election by the chief justice of the supreme court. The election shall be considered an appointment for the purposes of this part.

(2) Appointments provided for in this section shall be made within 30 days of the completion of the preceding terms.

History: En. Sec. 1, Ch. 470, L. 1973; amd. Sec. 30, Ch. 344, L. 1977; R.C.M. 1947, 93-705; amd. Sec. 6, Ch. 21, L. 1979; amd. Sec. 1, Ch. 651, L. 1987; amd. Sec. 1, Ch. 810, L. 1991.

Cross-References

Appointment of acting judge to replace one who enters military service, 10-2-227.

3-1-1002. Staggered terms of members. (1) Members of the commission shall serve staggered 4-year terms.

(2) A member may not serve more than two full 4-year terms.

History: En. Sec. 2, Ch. 470, L. 1973; R.C.M. 1947, 93-706(1), (2); amd. Sec. 7, Ch. 21, L. 1979; amd. Sec. 2, Ch. 810, L. 1991.

3-1-1003. Vacancies. (1) In the event a vacancy on the commission occurs, the governor shall appoint a replacement for the remainder of the term. Such replacement shall be a member of the same group as the member he replaces.

(2) Appointments provided for in this section shall be made within 30 days of the occurrence of any vacancy.

History: En. Sec. 2, Ch. 470, L. 1973; R.C.M. 1947, 93-706(3), (4); amd. Sec. 8, Ch. 21, L. 1979.

3-1-1004. No compensation — travel expenses. The members of the commission are not entitled to compensation for their services, but they are entitled to travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, while actually engaged in the discharge of their official duties.

History: En. Sec. 12, Ch. 470, L. 1973; amd. Sec. 29, Ch. 453, L. 1977; R.C.M. 1947, 93-716.

3-1-1005. Commission members not eligible for judicial office. Members of the commission are not eligible for nomination to a judicial office during their term on the commission or for 1 year thereafter.

History: En. Sec. 11, Ch. 470, L. 1973; R.C.M. 1947, 93-715.

3-1-1006. Secretary — election and duties. (1) The commission shall elect one of its members to serve as the secretary and upon such election shall notify the governor of the name and mailing address of such person.

(2) The secretary shall keep a record of all proceedings by the commission and act as corresponding secretary with the governor's office and with the office of the chief justice of the supreme court.

History: En. Sec. 3, Ch. 470, L. 1973; R.C.M. 1947, 93-707; amd. Sec. 2, Ch. 651, L. 1987.

3-1-1007. Commission to make rules — confidentiality of proceedings. (1) The commission shall adopt and publish rules:

(a) for the conduct of its affairs and the format of reports filed under 3-1-1010;

(b) establishing a procedure for providing the public with notice of a vacancy within 10 days of receipt of the notice of the vacancy;

(c) establishing an application period of not less than 30 days from the date of public notice under subsection (1)(b) and the procedure for applying for a position; and

(d) establishing a reasonable period for reviewing applications and interviewing applicants that provides at least 30 days for public comment concerning applicants.

(2) A copy of the rules must be filed with the clerk of the supreme court.

(3) The total time from receipt of notice of a vacancy until a list of names is submitted to the governor or chief justice may not exceed 90 days.

(4) The proceedings of the commission and the related documents shall be open to the public except when the demands of individual privacy clearly exceed the merits of public disclosure.

History: En. Sec. 13, Ch. 470, L. 1973; R.C.M. 1947, 93-717; amd. Sec. 1, Ch. 423, L. 1979; amd. Sec. 3, Ch. 810, L. 1991.

3-1-1008. Quorum. Four members of the commission shall constitute a quorum for the transaction of business. To submit a name to the governor or to the chief justice of the supreme court, there must be a concurrence of at least four members.

History: En. Sec. 4, Ch. 470, L. 1973; R.C.M. 1947, 93-708; amd. Sec. 3, Ch. 651, L. 1987.

3-1-1009. Investigation by commission — application for consideration. (1) The commission and each member are authorized to make investigations concerning the qualifications of eligible persons.

(2) Any lawyer in good standing who has the qualifications set forth by law for holding judicial office may be a candidate and may make application to the commission for consideration, or application may be made by any person on his behalf.

History: En. Sec. 5, Ch. 470, L. 1973; R.C.M. 1947, 93-709.

3-1-1010. Lists submitted to governor and chief justice — report on proceedings. (1) If a supreme court justice, a district judge, the workers' compensation judge, or the chief water judge gives notice of his resignation to take effect on a specific date, the commission shall meet as soon as possible after the justice's or judge's proposed resignation date has been verified by the chief justice of the supreme court. If no notice is given, the commission shall meet as soon as possible after a vacancy occurs. The meeting must be held in compliance with 3-1-1007. The commission shall submit to the governor or chief justice, within the time period established under 3-1-1007, a list of not less than three or more than five nominees for appointment to the vacant position.

(2) Any list must be accompanied by a written report indicating the vote on each nominee, the content of the application submitted by each nominee, letters and public comments received regarding the nominee, and the commission's reasons for recommending each nominee for appointment. The report must give specific reasons for recommending each nominee.

History: En. Sec. 6, Ch. 470, L. 1973; R.C.M. 1947, 93-710; amd. Sec. 9, Ch. 21, L. 1979; amd. Sec. 2, Ch. 423, L. 1979; amd. Sec. 1, Ch. 344, L. 1987; amd. Sec. 4, Ch. 651, L. 1987; amd. Sec. 4, Ch. 810, L. 1991.

3-1-1011. Governor or chief justice of the supreme court to nominate from list. The governor, or the chief justice of the supreme court for the office described in 3-7-221, must make a nomination from the list of nominees submitted by the commission.

History: En. Sec. 7, Ch. 470, L. 1973; R.C.M. 1947, 93-711; amd. Sec. 10, Ch. 21, L. 1979; amd. Sec. 2, Ch. 344, L. 1987; amd. Sec. 5, Ch. 651, L. 1987.

Cross-References

Appointment of acting judge to replace one who enters military service, 10-2-227.

3-1-1012. When governor fails to nominate. If the governor fails to nominate within 30 days after receipt of the list of nominees, the chief justice or acting chief justice shall make the nomination.

History: En. Sec. 8, Ch. 470, L. 1973; R.C.M. 1947, 93-712; amd. Sec. 11, Ch. 21, L. 1979; amd. Sec. 3, Ch. 344, L. 1987.

3-1-1013. Senate confirmation — exception — nomination in the interim — appointment contingent on vacancy. (1) (a) Except as provided in subsection (2):

(i) each appointment must be confirmed by the senate; and

(ii) an appointment made while the senate is not in session is effective until the end of the next special or regular legislative session.

(b) If the appointment is subject to senate confirmation under subsection (1)(a) and is not confirmed, the office is vacant and another selection of nominees and appointment must be made.

(2) The following appointments are not subject to senate confirmation, and there must be an election for the office at the general election immediately preceding the scheduled expiration of the term or following the appointment, as applicable:

(a) an appointment made while the senate is not in session if the term to which the appointee is appointed expires prior to the next legislative session, regardless of the time of the appointment in relation to the candidate filing deadlines for the office; and

(b) an appointment made while the senate is not in session if a general election will be held prior to the next legislative session and the appointment is made prior to the candidate filing deadline for primary elections held pursuant to 13-1-107, in which case the position is subject to election at the next primary and general elections.

(3) A nomination is not effective unless a vacancy in office occurs.

History: En. Sec. 9, Ch. 470, L. 1973; R.C.M. 1947, 93-713; amd. Sec. 12, Ch. 21, L. 1979; amd. Sec. 4, Ch. 344, L. 1987; amd. Sec. 1, Ch. 377, L. 1993.

Cross-References

Appointments by Governor, Title 5, ch. 5, part 3.

3-1-1014. Duration of appointment — election for remainder of term. (1) If an appointment subject to 3-1-1013(1) is confirmed by the senate, the appointee shall serve until the appointee or another person elected at the first general election after confirmation is elected and qualified. The candidate elected at that election holds the office for the remainder of the unexpired term.

(2) If an appointment is subject to 3-1-1013(2), the appointee shall serve until the day before the first Monday of January following the first general election after appointment. The candidate elected at that election holds the office for the full term to which elected or for the remainder of the unexpired term, as applicable.

(3) If an incumbent judge or justice files for election to the office to which the judge or justice was elected or appointed and no other candidate files for election to that office, the name of the incumbent must nevertheless be placed on the general election ballot to allow voters of the district or state to approve or reject the incumbent. If an incumbent is rejected at an election for approval or rejection, the incumbent shall serve until the day before the first Monday of January following the election, at which time the office is vacant and another selection and appointment must be made.

History: En. Sec. 10, Ch. 470, L. 1973; R.C.M. 1947, 93-714; amd. Sec. 13, Ch. 21, L. 1979; amd. Sec. 2, Ch. 377, L. 1993.

Part 11

Judicial Standards Commission

Part Cross-References

Removal and discipline of judges, Art. VII, sec. 11, Mont. Const.

3-1-1101. Creation and composition of commission. There is created a judicial standards commission consisting of five members as follows:

(1) two district court judges from different judicial districts, elected by the district judges under an elective procedure initiated by and conducted by the supreme court, and their election must be certified by the chief justice of the supreme court, which for the purpose of this part is considered as an appointment;

(2) one attorney who has practiced law in this state for at least 10 years, appointed by the supreme court;

(3) two citizens who are not attorneys or judges of any court, active or retired, appointed by the governor.

History: En. Sec. 1, Ch. 95, L. 1973; R.C.M. 1947, 93-718; amd. Sec. 8, Ch. 52, L. 1993.

3-1-1102. Staggered terms of members. (1) The first appointments made under this part are as follows:

(a) The supreme court shall designate by certificate of the chief justice one district court judge to serve for 4 years and one to serve for 2 years.

(b) The attorney shall serve for 4 years.

(c) The governor shall appoint one citizen to serve for 4 years and one to serve for 2 years.

(2) Thereafter, all terms shall be for 4 years.

History: En. Sec. 2, Ch. 95, L. 1973; R.C.M. 1947, 93-719.

3-1-1103. Terminated membership — vacancies. (1) Commission membership terminates if a member ceases to hold the position that qualified him for appointment.

(2) In the event a vacancy occurs on the commission, the appointing authority of the vacated seat shall designate a successor.

History: En. Sec. 3, Ch. 95, L. 1973; R.C.M. 1947, 93-720.

3-1-1104. No compensation — travel expenses. A commission member is not entitled to compensation for his services but is entitled to travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, incurred in the performance of his duties.

History: En. Sec. 4, Ch. 95, L. 1973; amd. Sec. 30, Ch. 453, L. 1977; R.C.M. 1947, 93-721.

3-1-1105. Confidential proceedings — rules for commission. (1) Except as provided in 3-1-1107 and 3-1-1121 through 3-1-1126, all papers filed with and proceedings before the commission or masters are confidential and the filing of papers with and the testimony given before the commission or masters is privileged communication.

(2) The commission shall make rules for the conduct of its affairs and the enforcement of confidentiality consistent with this part.

History: En. Sec. 6, Ch. 95, L. 1973; R.C.M. 1947, 93-723; amd. Sec. 1, Ch. 441, L. 1981.

3-1-1106. Investigation of judicial officers — complaint — hearing — recommendations. (1) (a) The commission, upon the filing of a written complaint by any citizen of the state, may initiate an investigation of any judicial officer in the state to determine if there are grounds for conducting additional proceedings before the commission. If the commission's investigation indicates that additional proceedings before the commission may be justified, the commission shall require the citizen who filed the original written complaint to sign a verified written complaint before conducting such additional proceedings.

(b) The commission shall give the judicial officer written notice of the citizen's complaint and of the initiation of an investigation. Notice must also be given if a verified written complaint is filed and must include the charges made, the grounds for the charges, and a statement that the judicial officer may file an answer. The notice must be signed by the commission.

(2) The commission, after such investigation as it considers necessary and upon a finding of good cause, may:

(a) order a hearing to be held before it concerning the censure, suspension, removal, or retirement of a judicial officer;

(b) confidentially advise the judicial officer and the supreme court, in writing, that the complaint will be dismissed if the judicial officer files with the commission a letter stating that he will take corrective action satisfactory to the commission; or

(c) request the supreme court to appoint one or more special masters who are judges of courts of record to hear and take evidence and to report to the commission.

(3) If after hearing or after considering the record and report of the masters the commission finds the charges true, it shall recommend to the supreme court the censure, suspension, removal, or disability retirement of the judicial officer.

History: En. Sec. 5, Ch. 95, L. 1973; R.C.M. 1947, 93-722; amd. Sec. 1, Ch. 334, L. 1983; amd. Sec. 1, Ch. 386, L. 1991.

Cross-References

Supreme Court Justice or District Court Judge not to run for office, 3-1-607.

Forced vacancy, 3-1-608.

3-1-1107. Action by supreme court. (1) The supreme court shall review the record of the proceedings and shall make such determination as it finds just and proper and may:

(a) order censure, suspension, removal, or retirement of a judicial officer; or

(b) wholly reject the recommendation.

(2) Any hearing conducted before the supreme court relative to a recommendation by the commission, together with all papers pertaining to such recommendation, shall be accessible to the public.

History: En. Sec. 7, Ch. 95, L. 1973; R.C.M. 1947, 93-724; amd. Sec. 3, Ch. 441, L. 1981.

3-1-1108. Nonparticipation of interested judicial officer. A judicial officer who is a member of the commission or of the supreme court may not participate in any proceeding involving his own censure, suspension, removal, or retirement or that of his spouse, a relative within the sixth degree of consanguinity, or the spouse of such a relative.

History: En. Sec. 8, Ch. 95, L. 1973; amd. Sec. 31, Ch. 344, L. 1977; R.C.M. 1947, 93-725.

Cross-References

Relationship by affinity, 1-1-219.

Degrees of kindred, 72-11-102 through 72-11-104.

3-1-1109. Interim disqualification of judicial officer. (1) A judicial officer must be disqualified from serving as a judicial officer, without loss of salary, while there is pending an indictment or an information charging him with a crime punishable as a felony under Montana or federal law.

(2) When the commission files with the supreme court a recommendation that a judicial officer be removed or retired, the judicial officer must be disqualified from serving as a judicial officer, without loss of salary, pending the supreme court's review of the record and proceedings.

History: En. Sec. 9, Ch. 95, L. 1973; amd. Sec. 32, Ch. 344, L. 1977; R.C.M. 1947, 93-726; amd. Sec. 2, Ch. 386, L. 1991.

Cross-References

Expenses of Acting Justice of the Peace, 3-10-234.

3-1-1110. Procedure when convicted of crime. (1) On recommendation of the commission, the supreme court may suspend a judicial officer from office without salary when he pleads guilty or no contest or is found guilty of a crime punishable as a felony under Montana or federal law or of any other crime involving moral turpitude.

(2) If his conviction is reversed, suspension terminates and he shall be paid his salary for the period of suspension.

(3) If he is suspended and his conviction becomes final, the supreme court shall remove him from office.

History: En. Sec. 10, Ch. 95, L. 1973; R.C.M. 1947, 93-727.

Cross-References

Expenses of Acting Justice of the Peace, 3-10-234.

3-1-1111. Orders for retirement or removal. (1) Upon an order for retirement, the judicial officer shall be retired with the same rights and privileges as if he retired pursuant to statute.

(2) Upon an order for removal, the judicial officer shall be removed from office and his salary shall cease from the date of the order. He shall be ineligible for any other judicial office and pending further order of the court is suspended from practicing law.

History: En. Sec. 11, Ch. 95, L. 1973; R.C.M. 1947, 93-728.

Cross-References

Montana judges' retirement system, Title 19, ch. 5.

3-1-1112 through 3-1-1120 reserved.

3-1-1121. Public disclosure required. If the commission finds good cause to order a hearing pursuant to 3-1-1106(2), the commission must allow public access to:

(1) all papers pertaining to each finding of good cause, including charges that are later determined not to be grounds for recommending retirement or disciplinary action to the supreme court;

(2) the proceedings in which the commission or masters hear the charges against a judge; and

(3) all transcripts or recordings of proceedings before the commission or masters pertaining to the matters described in subsections (1) and (2).

History: **En. Sec. 2, Ch. 441, L. 1981.**

3-1-1122. Judge's waiver of confidentiality — hearing made public. In addition to the public disclosure required under 3-1-1107, 3-1-1121, and 3-1-1123 through 3-1-1126, the commission must allow public access to all papers filed with and testimony and hearings before the commission or masters in a given case if the judge against whom a complaint has been filed waives his right of confidentiality and requests in writing that the proceedings be accessible to the public. Public disclosure of information required under 3-1-1107, 3-1-1121, and 3-1-1123 through 3-1-1126 is not contingent upon a waiver under this section.

History: **En. Sec. 4, Ch. 441, L. 1981; amd. Sec. 3, Ch. 386, L. 1991.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

3-1-1123. Public statements by commission. In any case in which the subject matter becomes public, through independent sources or through a waiver of confidentiality by the judge against whom the complaint has been filed, the commission may issue statements as it considers appropriate in order to:

(1) confirm the pendency of the investigation;
(2) clarify the procedural aspects of the disciplinary proceedings;
(3) explain the right of the judge to a fair hearing without prejudgment;
(4) state that the judge denies the allegations; or
(5) declare that there is insufficient evidence for a finding of good cause.

History: **En. Sec. 5, Ch. 441, L. 1981.**

3-1-1124. Disclosure for judicial selection — appointment or assignment. If in connection with the selection or appointment of a judge, any state or federal agency seeks information or written materials from the commission concerning that judge, information may be divulged in accordance with procedures prescribed by the commission, including reasonable notice to the udge affected unless the judge signs a waiver of notice. If in connection with the assignment of a retired judge to judicial duties, any appropriate authority seeks information or written materials from the commission about that judge, nformation may be divulged in accordance with procedures prescribed by the commission, including reasonable notice to the judge affected unless the judge signs a waiver of notice.

History: **En. Sec. 6, Ch. 441, L. 1981.**

3-1-1125. Efficiency and effectiveness — audit authorized. (1) The egislative auditor may audit the commission to determine whether it is efficiently and effectively processing complaints against judicial officers in the tate in accordance with this part.

(2) The confidentiality provisions of this part do not bar the legislative auditor from obtaining access to any information possessed by the commission that is necessary to the legislative audit function so long as confidential information is kept confidential by the legislative auditor.

History: En. Sec. 7, Ch. 441, L. 1981.

Cross-References

Powers and duties of Legislative Auditor, 5-13-304.

3-1-1126. Commission report to legislature. (1) The commission shall, as provided in 5-11-210, submit to the legislature a report containing the following information:

(a) identification of each complaint, whether or not verified, received by the commission during the preceding biennium by a separate number that in no way reveals the identity of the judge complained against;

(b) the date each complaint was filed;

(c) the general nature of each complaint;

(d) whether there have been previous complaints against the same judge and, if so, the general nature of the previous complaints;

(e) the present status of all complaints filed with or pending before the commission during the preceding biennium; and

(f) whenever a final disposition of a complaint has been made during the preceding biennium, the nature of the disposition, the commission's recommendation, if any, to the supreme court, and the action taken by the supreme court.

(2) The commission must observe the confidentiality provisions of this part in fulfilling the requirements of this section.

History: En. Sec. 8, Ch. 441, L. 1981; amd. Sec. 14, Ch. 112, L. 1991.

Parts 12 through 14 reserved

Part 15

Courts of Limited Jurisdiction Training and Certification of Judges

Part Cross-References

Justices of the Peace — orientation course — annual training, 3-10-203.

City Judges — training sessions, 3-11-204.

3-1-1501. Definitions. As used in this part, the following definitions apply:

(1) "Commission" means the commission on courts of limited jurisdiction established by the supreme court.

(2) "Judge" means:

(a) a municipal court judge;

(b) a justice of the peace; or

(c) a city judge.

History: En. Sec. 1, Ch. 127, L. 1985.

3-1-1502. Training and certification of judges. Except as provided in 3-1-1503, no judge selected for a term of office may assume the functions of his office unless he has filed with the county clerk and recorder in his jurisdiction a certificate of completion of a course of education and training prescribed by the commission.

History: **En. Sec. 2, Ch. 127, L. 1985; amd. Sec. 1, Ch. 317, L. 1991.**

Cross-References

Justices of the Peace — certification required before taking oath, 3-10-202.

Justice of the Peace, City Judge, and Municipal Court Judge — certification of results of canvass of votes cast for, 13-15-405.

3-1-1503. Exception — temporary certificate. (1) Section 3-1-1502 does not apply to a judge who has received a temporary certificate issued by the commission as provided for in subsection (2).

(2) The commission may issue a temporary certificate enabling a judge to assume the functions of his office pending completion of a course as required by 3-1-1502. The temporary certificate must be in a form and subject to the terms and conditions prescribed by the commission.

(3) The commission may issue a temporary certificate only if:

(a) the judge is appointed or elected after the course is offered; or

(b) the commission grants an excuse because of a personal illness, a death in the family, or other good cause.

(4) The appointing authority for an appointed judge shall notify the commission of the person appointed, and the person appointed must be certified as provided in 3-1-1502 or this section prior to assuming office.

History: **En. Secs. 3, 4, Ch. 127, L. 1985; amd. Sec. 2, Ch. 317, L. 1991.**

3-1-1504 and 3-1-1505 reserved.

3-1-1506. Expenses. Each judge is entitled to reimbursement for all actual and necessary travel expenses and other costs incurred in attending a course of training and education pursuant to 3-1-1502. Such reimbursement must be paid as provided for in 3-10-203 and 3-11-204.

History: **En. Sec. 5, Ch. 127, L. 1985.**

3-1-1507. Disqualification. Each judge shall complete a course of training and education as required by 3-1-1502. Subject to 3-1-1503, failure to obtain a certificate of completion disqualifies the elected or appointed judge from assuming office and creates a vacancy in the office.

History: **En. Sec. 6, Ch. 127, L. 1985.**

3-1-1508. Credit toward annual training. Attendance of a training course prescribed by 3-1-1502 shall apply toward fulfillment of mandatory annual training requirements provided in 3-10-203 and 3-11-204.

History: **En. Sec. 7, Ch. 127, L. 1985.**

CHAPTER 2

SUPREME COURT

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Part 1
Supreme Court Justices

Part Cross-References

Judicial Nomination Commission, Title 3, ch. 1, part 10.

Montana judges' retirement system, Title 19, ch. 5.

3-2-101. Number, election, and term of office. The supreme court consists of a chief justice and six associate justices who are elected by the qualified electors of the state at large at the general state elections next preceding the expiration of the terms of office of their predecessors, respectively, and hold their offices for the term of 8 years from and after the first Monday of January next succeeding their election.

History: En. Sec. 12, C. Civ. Proc. 1895; re-en. Sec. 6244, Rev. C. 1907; amd. Sec. 1, Ch. 31, Ex. L. 1919; re-en. Sec. 8790, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 40; re-en. Sec. 8790, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1973; R.C.M. 1947, 93-201; amd. Sec. 1, Ch. 683, L. 1979.

Cross-References

Organization of Supreme Court, Art. VII, sec. 3, Mont. Const.

3-2-102. Qualifications and residence. (1) No person is eligible for the office of justice of the supreme court unless he is a citizen of the United States, has resided in the state 2 years immediately before taking office, and has been admitted to practice law in Montana for at least 5 years prior to the date of appointment or election.

(2) Justices of the supreme court must reside within the state during their terms of office.

History: En. Sec. 161, C. Civ. Proc. 1895; re-en. Sec. 6309, Rev. C. 1907; re-en. Sec. 8863, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 157; re-en. Sec. 8863, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1973; amd. Sec. 27, Ch. 344, L. 1977; R.C.M. 1947, 93-702(part).

Cross-References

Supreme Court Justice qualifications, Art. VII, sec. 9, Mont. Const.

Rules for determining residence, 1-1-215.

3-2-103. Computation of term of office. The years during which a justice of the supreme court is to hold office are to be computed respectively from and including the first Monday of January of any one year to and excluding the first Monday of January of the next succeeding year.

History: En. Sec. 13, C. Civ. Proc. 1895; re-en. Sec. 6245, Rev. C. 1907; re-en. Sec. 8797, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 41; re-en. Sec. 8797, R.C.M. 1935; R.C.M. 1947, 93-208.

3-2-104. Salaries — expenses. (1) The salaries of justices of the supreme court are provided for in 2-16-403.

(2) Actual and necessary travel expenses of the justices of the supreme court shall be the travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of their official duties.

History: (1)En. by Code Commissioner, 1979; (2)En. Sec. 1, Ch. 85, L. 1917; re-en. Sec. 8815, R.C.M. 1921; re-en. Sec. 8815, R.C.M. 1935; Sec. 93-304, R.C.M. 1947; R.C.M. 1947, 93-304(part); (3)En. Sec. 1, Ch. 528, L. 1979; amd. Sec. 1, Ch. 375, L. 1981; amd. Sec. 6, Ch. 3, L. 1985; amd. Sec. 3, Ch. 462, L. 1989; amd. Sec. 13, Ch. 455, L. 1995.

Cross-References

Salaries of Supreme Court Justices, Art. VII, sec. 7, Mont. Const.; 2-16-403.

Part 2

Supreme Court Jurisdiction

Part Cross-References

Jurisdiction of Supreme Court, Art. VII, sec. 2, Mont. Const.

3-2-201. Types of jurisdiction. The jurisdiction of the supreme court is of two kinds:

(1) original; and

(2) appellate.

History: En. Sec. 18, C. Civ. Proc. 1895; re-en. Sec. 6250, Rev. C. 1907; re-en. Sec. 8802, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 50; re-en. Sec. 8802, R.C.M. 1935; R.C.M. 1947, 93-213.

3-2-202. Original jurisdiction — contest of ballot issue. (1) Except as provided in subsection (3), in the exercise of its original jurisdiction, the supreme court has power to issue writs of mandamus, certiorari, prohibition, injunction, and habeas corpus.

(2) It also has power to issue all other writs necessary and proper to the complete exercise of its appellate jurisdiction.

(3) (a) Except as provided in subsection (3)(b), a contest of a ballot issue submitted by initiative or referendum may be brought prior to the election only if it is filed within 30 days after the date on which the issue was certified to the governor, as provided in 13-27-308, and only for the following causes:

(i) violation of the law relating to qualifications for inclusion on the ballot;

(ii) constitutional defect in the substance of a proposed ballot issue; or

(iii) illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.

(b) A contest of a ballot issue based on subsection (3)(a)(i) or (3)(a)(iii) may be brought at any time after discovery of illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.

(c) Nothing in subsection (3) limits the right to challenge a measure enacted by a vote of the people.

History: En. Sec. 19, C. Civ. Proc. 1895; re-en. Sec. 6251, Rev. C. 1907; re-en. Sec. 8803, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 51; re-en. Sec. 8803, R.C.M. 1935; R.C.M. 1947, 93-214; amd. Sec. 1, Ch. 540, L. 1987.

Cross-References

Right to habeas corpus, Art. II, sec. 19, Mont. Const.

Power of appellate court not limited, Rule 62(g), M.R.Civ.P. (see Title 25, ch. 20).

Acceptance and manner of conducting original proceedings in Supreme Court, Rule 17, M.R.App.P. (see Title 25, ch. 21).

Injunctions, Title 27, ch. 19.

Writ of certiorari, 27-25-102.

Writ of mandamus, 27-26-102.

Writ of prohibition, 27-27-102.

Proceeding for unlawful assertion of authority, 27-28-101.

Habeas corpus — rights and procedure, Title 46, ch. 22.

3-2-203. Appellate jurisdiction. The appellate jurisdiction of the supreme court extends to all cases at law and in equity.

History: En. Sec. 20, C. Civ. Proc. 1895; re-en. Sec. 6252, Rev. C. 1907; re-en. Sec. 8804, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 52; re-en. Sec. 8804, R.C.M. 1935; R.C.M. 1947, 93-215.

3-2-204. Powers and duties of court on appeals. (1) The supreme court may affirm, reverse, or modify any judgment or order appealed from and may direct the proper judgment or order to be entered or direct a new trial or further proceedings to be had.

(2) The decision of the court must be given in writing, and a syllabus thereof must be prepared by the court and filed with the opinion.

(3) In giving its decision, if a new trial be granted, the court must pass upon and determine all the questions of law involved in the case presented upon such appeal and necessary to the final determination of the case.

(4) Its judgment in appealed cases must be remitted to the court from which the appeal was taken.

(5) In equity cases and in matters and proceedings of an equitable nature, the supreme court shall review all questions of fact arising upon the evidence presented in the record, whether the same be presented by specifications of particulars in which the evidence is alleged to be insufficient or not, and determine the same, as well as questions of law, unless for good cause a new trial or the taking of further evidence in the court below be ordered. Nothing herein shall be construed to abridge in any manner the powers of the supreme court in other cases.

History: En. Ch. 1, Ex. L. 1903; re-en. Sec. 6253, Rev. C. 1907; re-en. Sec. 8805, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 53; re-en. Sec. 8805, R.C.M. 1935; R.C.M. 1947, 93-216.

Cross-References

Exclusive method of review, 25-12-101.

Rules governing appeals, Rule 1, M.R.App.P. (see Title 25, ch. 21).

Dismissal of appeal, Rule 12, M.R.App.P. (see Title 25, ch. 21).

3-2-205. Injunctions. (1) Upon such terms and under such rules as the supreme court may establish, the supreme court may continue in force an injunction order made by a district court or judge or grant an injunction order and writ pending an appeal to the supreme court from an order of a district court or judge refusing or dissolving an injunction.

(2) No action to obtain an injunction may be commenced in the supreme court except in cases where the state is a party, the public is interested, or the rights of the public are involved. The proper district court has jurisdiction of all injunctions and the commencement of all actions therefor, except as provided in this section.

(3) The supreme court may provide rules for the commencement and trial of actions for injunctions in that court.

History: En. Sec. 23, C. Civ. Proc. 1895; re-en. Sec. 6255, Rev. C. 1907; re-en. Sec. 8807, R.C.M. 1921; re-en. Sec. 8807, R.C.M. 1935; R.C.M. 1947, 93-218; amd. Sec. 14, Ch. 21, L. 1979.

Cross-References

Original jurisdiction of District Courts, 3-5-302.

Power of appellate court, Rule 62(g), M.R.Civ.P. (see Title 25, ch. 20).

Acceptance and manner of conducting original proceedings in Supreme Court, Rule 17, M.R.App.P. (see Title 25, ch. 21).

Appeals from injunction orders, Rule 40, M.R.App.P. (see Title 25, ch. 21).

Injunctions, Title 27, ch. 19.

3-2-206 through 3-2-210 reserved.

3-2-211. Concurrence of majority — for what necessary. The concurrence of a majority of the justices of the supreme court is necessary for the issuance of any writ or the transaction of any business except such as can be done at chambers.

History: En. Sec. 22, C. Civ. Proc. 1895; re-en. Sec. 6254, Rev. C. 1907; amd. Sec. 1, Ch. 34, L. 1921; re-en. Sec. 8806, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 54; re-en. Sec. 8806, R.C.M. 1935; R.C.M. 1947, 93-217(part).

Cross-References

Majority to join in and pronounce decision, Art. VII, sec. 3, Mont. Const.

3-2-212. Powers of justices individually — certiorari and habeas corpus. (1) Each of the justices of the supreme court shall have power to issue writs of habeas corpus to any part of the state upon petition by or on behalf of any person held in actual custody and may make such writs returnable before himself, the supreme court, or justice thereof or before any district court of the state or any judge thereof. Such writs may be heard and determined by the justice, court, or judge before whom they are made returnable.

(2) Each of the justices of the supreme court may also issue and hear and determine writs of certiorari in proceedings for contempt in the district court.

History: Ap. p. Sec. 170, C. Civ. Proc. 1895; re-en. Sec. 6313, Rev. C. 1907; re-en. Sec. 8866, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 165; re-en. Sec. 8866, R.C.M. 1935; Sec. 93-801, R.C.M. 1947; Ap. p. Sec. 22, C. Civ. Proc. 1895; re-en. Sec. 6254, Rev. C. 1907; amd. Sec. 1, Ch. 34, L. 1921; re-en. Sec. 8806, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 54; re-en. Sec. 8806, R.C.M. 1935; Sec. 93-217, R.C.M. 1947; R.C.M. 1947, 93-217(part), 93-801.

Cross-References

Right to habeas corpus, Art. II, sec. 19, Mont. Const.

Writ of certiorari, 3-1-523, 27-25-102.

Original proceedings before Supreme Court, Rule 17, M.R.App.P. (see Title 25, ch. 21).

Writ of mandamus, 27-26-102.

Writ of prohibition, 27-27-102.

Proceeding for unlawful assertion of authority, 27-28-101.

Habeas corpus — rights and procedure, Title 46, ch. 22.

Part 3

Sessions of the Supreme Court

3-2-301. Who shall preside. The chief justice presides at all sessions of the supreme court, and in case of his absence, the associate justice having the shortest term to serve presides in his stead.

History: En. Sec. 15, C. Civ. Proc. 1895; re-en. Sec. 6247, Rev. C. 1907; re-en. Sec. 8799, R.C.M. 1921; re-en. Sec. 8799, R.C.M. 1935; R.C.M. 1947, 93-210(part).

3-2-302. Quorum. A majority of the justices is necessary to form a quorum of the court. Any decision must be concurred in by a majority of the justices of the court, but one or more of the justices may adjourn the court from day to day or to a day certain.

History: En. Sec. 15, C. Civ. Proc. 1895; re-en. Sec. 6247, Rev. C. 1907; re-en. Sec. 8799, R.C.M. 1921; re-en. Sec. 8799, R.C.M. 1935; R.C.M. 1947, 93-210(part); amd. Sec. 4, Ch. 683, L. 1979.

3-2-303. Terms of supreme court. (1) Four terms of the supreme court must be held each year at the seat of government, commencing on the first Tuesdays of March, June, October, and December.

(2) The chief justice or any two justices have power to call a special term at any time.

History: En. Sec. 16, C. Civ. Proc. 1895; re-en. Sec. 6248, Rev. C. 1907; re-en. Sec. 8800, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 47; re-en. Sec. 8800, R.C.M. 1935; R.C.M. 1947, 93-211(part).

3-2-304. Physical facilities. (1) If proper rooms in which to hold the court and for the accommodation of the officers thereof are not provided by the state, together with attendants, furniture, fuel, lights, and stationery, suitable and sufficient for the transaction of business, the court or a majority thereof may direct the clerk of the supreme court to provide such rooms, attendants, furniture, lights, fuel, and stationery.

(2) The expenses thereof, certified by any two justices to be correct, must be paid out of the state treasury only out of funds in the state treasury appropriated to the supreme court.

History: En. Sec. 16, C. Civ. Proc. 1895; re-en. Sec. 6248, Rev. C. 1907; re-en. Sec. 8800, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 47; re-en. Sec. 8800, R.C.M. 1935; R.C.M. 1947, 93-211(part); amd. Sec. 1, Ch. 610, L. 1981.

Cross-References

Appointment of marshal and other employees, 3-2-501.

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

Part 4

Clerk of the Supreme Court

3-2-401. Election and term of office. There must be a clerk of the supreme court who must be elected by the electors at large of the state and hold his office for the term of 6 years from the first Monday of January next succeeding his election.

History: En. Sec. 870, Pol. C. 1895; re-en. Sec. 299, Rev. C. 1907; re-en. Sec. 370, R.C.M. 1921; Cal. Pol. C. Secs. 749-758; re-en. Sec. 370, R.C.M. 1935; amd. Sec. 45, Ch. 100, L. 1973; R.C.M. 1947, 82-501.

3-2-402. Duties — electronic filing and storage of court records. (1) It is the duty of the clerk to:

(a) keep the seal of the supreme court, its records and files, and the roll of attorneys and counselors at law;

(b) adjourn the court from day to day at the beginning of any term in the absence of any justice and until the arrival of a majority of the justices;

(c) file all papers or transcripts required by law to be filed;

(d) issue writs and certificates and approve bonds or undertakings when required;

(e) make out all transcripts to the supreme court of the United States;

(f) make copies of papers or records when demanded by law or the rules of the court; and

(g) perform other duties as may be required by law and the rules and practice of the supreme court.

(2) The clerk may elect to keep court documents by means of electronic filing or storage, or both, as provided in 3-1-114 and 3-1-115, in lieu of or in addition to keeping paper records.

History: Ap. p. Sec. 871, Pol. C. 1895; re-en. Sec. 300, Rev. C. 1907; re-en. Sec. 371, R.C.M. 1921; re-en. Sec. 371, R.C.M. 1935; Sec. 82-502, R.C.M. 1947; Ap. p. Sec. 3, p. 208, L. 1891; amd. Sec. 873, Pol. C. 1895; re-en. Sec. 302, Rev. C. 1907; re-en. Sec. 373, R.C.M. 1921; re-en. Sec. 373, R.C.M. 1935; Sec. 82-504, R.C.M. 1947; R.C.M. 1947, 82-502, 82-504; amd. Sec. 15, Ch. 21, L. 1979; amd. Sec. 3, Ch. 174, L. 1995.

Cross-References

Court seal, 3-1-201, 3-1-202, 3-1-204, 3-1-206.

Adjournment by Clerk for absence of judge, 3-1-304, 3-1-305.

Duty of Clerk on receipt of mandate from U.S. Supreme Court, Rule 35, M.R.App.P. (see Title 25, ch. 21).

Roll of attorneys, 37-61-209.

Striking attorney's name from roll upon disbarment, 37-61-309.

3-2-403. Fees. The clerk must collect the following fees:

(1) for filing the transcript on appeal in any civil case appealed to the supreme court, $75 payable by the appellant as payment in full for all services rendered in the case up to the remittitur to the court below;

(2) for filing a petition for any writ, $75, as payment in full for all services rendered in the cause;

(3) for a certificate of good standing as an attorney, $5;

(4) for preparing copies of documents on file, 15 cents per page;

(5) for each certified copy under seal, $1.

History: En. Sec. 872, Pol. C. 1895; re-en. Sec. 301, Rev. C. 1907; re-en. Sec. 372, R.C.M. 1921; re-en. Sec. 372, R.C.M. 1935; amd. Sec. 1, Ch. 156, L. 1939; amd. Sec. 1, Ch. 112, L. 1943; amd. Sec. 87, Ch. 147, L. 1963; amd. Sec. 3, Ch. 218, L. 1967; amd. Sec. 18, Ch. 344, L. 1977; R.C.M. 1947, 82-503(1); amd. Sec. 1, Ch. 204, L. 1985.

Cross-References

Disposition of fees — pension trust fund, 19-5-404.

Fees of Clerk of District Court, 25-1-201.

Appeal without prepayment of fees, Rule 11, M.R.App.P. (see Title 25, ch. 21).

Bar application fees, 37-61-205.

3-2-404. Disposition of fees. Except as otherwise provided by law, all fees collected by the clerk must be paid into the state treasury and must be credited to the general fund.

History: En. Sec. 872, Pol. C. 1895; re-en. Sec. 301, Rev. C. 1907; re-en. Sec. 372, R.C.M. 1921; re-en. Sec. 372, R.C.M. 1935; amd. Sec. 1, Ch. 156, L. 1939; amd. Sec. 1, Ch. 112, L. 1943; amd. Sec. 87, Ch. 147, L. 1963; amd. Sec. 3, Ch. 218, L. 1967; amd. Sec. 18, Ch. 344, L. 1977; R.C.M. 1947, 82-503(2); amd. Sec. 1, Ch. 321, L. 1981; amd. Sec. 6, Ch. 287, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 287 after exception clause substituted "all fees" for "three-fourths of all fees" and after "fund" deleted "and the remaining one-fourth of the fees shall be paid to the public employees' retirement division of the department of administration to be credited to the Montana judges' retirement system account"; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Disposition of fees — pension trust fund, 19-5-404.

3-2-405. Repealed. Sec. 3, Ch. 28, L. 1997.

History: En. Sec. 874, Pol. C. 1895; re-en. Sec. 303, Rev. C. 1907; re-en. Sec. 374, R.C.M. 1921; amd. Sec. 374, R.C.M. 1935; amd. Sec. 19, Ch. 344, L. 1977; R.C.M. 1947, 82-505.

3-2-406. Deputy clerk. The clerk of the supreme court shall appoint a deputy who, in the absence of the principal or in the case of vacancy in his office, shall perform all the duties of office until such disability be removed or vacancy be filled. Such deputy shall subscribe, take, and file the oath of office provided by law for other state officers before entering upon the performance of his duties.

History: En. Sec. 1, Ch. 86, L. 1903; re-en. Sec. 143, Rev. C. 1907; re-en. Sec. 122, R.C.M. 1921; re-en. Sec. 122, R.C.M. 1935; amd. Sec. 1, Ch. 181, L. 1947; amd. Sec. 1, Ch. 8, L. 1949; amd. Sec. 48, Ch. 177, L. 1965; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 82-601(part).

Part 5

Marshal of the Supreme Court

3-2-501. Appointment of marshal and other employees. The supreme court must appoint a marshal of the supreme court and may appoint such other attendants, reporters, and clerks as are necessary, who hold office at the pleasure of the court.

History: En. Sec. 862, Pol. C. 1895; re-en. Sec. 295, Rev. C. 1907; re-en. Sec. 366, R.C.M. 1921; re-en. Sec. 366, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1939; amd. Sec. 1, Ch. 205, L. 1955; R.C.M. 1947, 82-1801.

Cross-References

Physical facilities together with attendants, 3-2-304.

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

3-2-502. Duties of marshal. (1) It shall be the duty of the marshal to attend upon the supreme court and the justices thereof at each term of court. He shall be the executive officer of the court and act as crier thereof.

(2) He must serve within the state all returns and processes issuing from the supreme court and shall have all the powers and exercise all the duties pertaining to sheriffs as to the district courts so far as the same are applicable.

(3) He shall act as a law clerk for the supreme court justices.

History: En. Sec. 863, Pol. C. 1895; re-en. Sec. 296, Rev. C. 1907; re-en. Sec. 367, R.C.M. 1921; re-en. Sec. 367, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1939; R.C.M. 1947, 82-1802.

3-2-503. Accounts of marshal. All accounts of the marshal must be filed in the supreme court in a bill of items under oath certified by the chief justice and, when properly chargeable against the state and approved by the department of administration, must be paid out of the state treasury upon the warrant of the state treasurer.

History: En. Sec. 865, Pol. C. 1895; re-en. Sec. 298, Rev. C. 1907; re-en. Sec. 369, R.C.M. 1921; re-en. Sec. 369, R.C.M. 1935; amd. Sec. 99, Ch. 326, L. 1974; R.C.M. 1947, 82-1804; amd. Sec. 4, Ch. 325, L. 1995.

Part 6

Form and Reporting of Decisions

3-2-601. Decisions to be in writing. In the determination of causes, all decisions of the supreme court must be given in writing, the grounds of the decision must be stated, and each justice agreeing or concurring with the decision must so indicate by signing the decision. Any justice disagreeing with a decision must so indicate by written dissent.

History: En. Sec. 440, p. 132, Bannack Stat.; re-en. Sec. 597, p. 157, Cod. Stat. 1871; re-en. Sec. 17, C. Civ. Proc. 1895; re-en. Sec. 6249, Rev. C. 1907; re-en. Sec. 8801, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 49; re-en. Sec. 8801, R.C.M. 1935; amd. Sec. 1, Ch. 271, L. 1975; R.C.M. 1947, 93-212.

3-2-602. Justices to report decisions. The justices of the supreme court shall report the decisions of the supreme court.

History: En. Sec. 2, p. 72, L. 1899; re-en. Sec. 314, Rev. C. 1907; re-en. Sec. 378, R.C.M. 1921; Cal. Pol. C. Secs. 767-782; re-en. Sec. 378, R.C.M. 1935; amd. Sec. 2, Ch. 182, L. 1949; R.C.M. 1947, 82-2001.

3-2-603. Duties of reporters. The reporters of the decisions of the supreme court shall make careful and accurate reports of the cases decided by the supreme court. The reports of the cases must be made under the supervision of and pursuant to rules adopted by the justices of the supreme court.

History: En. Sec. 891, Pol. C. 1895; re-en. Sec. 307, Rev. C. 1907; re-en. Sec. 379, R.C.M. 1921; re-en. Sec. 379, R.C.M. 1935; amd. Sec. 1, Ch. 174, L. 1947; amd. Sec. 1, Ch.

14, L. 1961; amd. Sec. 1, Ch. 305, L. 1967; amd. Sec. 79, Ch. 326, L. 1974; R.C.M. 1947, 82-2002; amd. Sec. 2, Ch. 494, L. 1981; amd. Sec. 1, Ch. 28, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 28 deleted (2) and (3) that read: "(2) Reports of all cases shall be furnished to the West Publishing Company for inclusion in its publication, the Pacific Reporter, and to any other private printing or duplicating concern requesting the reports for publication.

(3) The department of administration, on request of the supreme court, shall contract with a publishing house to publish volumes of reports. The style, size, and format of the reports shall be determined by the justices. The department of administration shall prepare and issue a call for bids and, in accordance with the terms and specifications of the call, contract with the lowest and best bidder. The contract shall provide that the copies of the reports purchased by state or local governmental agencies of Montana, including the reports purchased by the supreme court pursuant to 3-2-604, shall be sold to them by the publisher at the cost of publication"; and made minor changes in style.

Cross-References

Power to contract for state printing, 18-7-101.

3-2-604. Distribution of reports. (1) On the publication of each volume of the reports, the supreme court shall purchase and distribute:

(a)

each volume to each justice of the supreme court and to each district court judge; and

(b) four copies of each volume to the law library of the state of Montana.

(2) All reports distributed pursuant to subsection (1) are for the use of the office and must be turned over to the successor in office.

History: En. Sec. 896, Pol. C. 1895; re-en. Sec. 312, Rev. C. 1907; amd. Sec. 1, Ch. 203, L. 1921; re-en. Sec. 384, R.C.M. 1921; re-en. Sec. 384, R.C.M. 1935; amd. Sec. 3, Ch. 46, L. 1937; amd. Sec. 20, Ch. 344, L. 1977; R.C.M. 1947, 82-2007; amd. Sec. 3, Ch. 494, L. 1981; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 2, Ch. 28, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 28 in (1), in introductory clause after "purchase", deleted "up to 221 copies from the publisher" and after "distribute" substituted "each volume" for "them at no charge and in the following manner:

(a) to the state library for distribution, five copies;

(b) to the library of congress, four copies;

(c) to the university of Montana-Missoula law library, two copies"; at end of (1)(a), after "judge", deleted "and county attorney, one copy"; deleted former (1)(f) through (1)(h) that read: "(f) to the attorney general, 11 copies;

(g) to other institutions, publishers, authors, and libraries with which the state law librarian has established a system of exchange for materials of comparable value, up to 50 copies; and

(h) to the university of Montana-Missoula up to 50 copies to be used by the law librarian of the university for the purpose of exchanges for materials of comparable value with libraries, universities, and institutions of higher education in other states"; in (2), near beginning after "distributed", substituted "pursuant to subsection (1)" for "to state, district, and other officers in the state"; and made minor changes in style.

3-2-605. Responsibilities of supreme court for security of data and information. The supreme court is responsible for assuring an adequate level of security for data and information technology resources, as defined in 2-15-102, within the judicial branch. In carrying out this responsibility, the supreme court shall, at a minimum:

(1) address the responsibilities prescribed in 2-15-114; and

(2) develop written minimum standards and guidelines for the judicial branch to follow in developing its security program.

History: En. Sec. 5, Ch. 592, L. 1987.

Part 7

Adoption of Rules of Civil Procedure

Part Cross-References

Supreme Court's power to make rules, Art. VII, sec. 2, Mont. Const.

3-2-701. Power of court over rules. The supreme court of this state shall have the power to regulate the pleading, practice, procedure, and the forms thereof in civil actions in all courts of this state by rules promulgated by it from time to time for the purpose of simplifying judicial proceedings in the courts of Montana and for promoting the speedy determination of litigation upon its merits. Such rules shall not abridge, enlarge, or modify the substantive rights of any litigant and shall not be inconsistent with the constitution of the state of Montana.

History: En. Sec. 1, Ch. 16, L. 1963; R.C.M. 1947, 93-2801-1.

Cross-References

Control over Montana Rules of Civil Procedure, Rule 86(a), M.R.Civ.P. (see Title 25, ch. 20).

3-2-702. Advisory committee. Before any rules are adopted, the supreme court shall appoint an advisory committee consisting of eight members of the bar of the state and at least three judges of the district court to assist the court in considering and preparing such rules as it may adopt.

History: En. Sec. 2, Ch. 16, L. 1963; R.C.M. 1947, 93-2801-2.

3-2-703. Distribution of proposed rules — suggestions of bench and bar. (1) Before any rule is adopted, the supreme court shall distribute copies of the proposed rule to the bench and bar of the state for their consideration and suggestions and shall give due consideration to such suggestions as they may submit to the court.

(2) The state bar of Montana or the association of Montana judges may file with the supreme court a petition specifying its suggestions concerning any existing or proposed rule and requesting a hearing thereon within 6 months after the filing of the petition.

History: En. Sec. 3, Ch. 16, L. 1963; amd. Sec. 54, Ch. 344, L. 1977; R.C.M. 1947, 93-2801-3.

Cross-References

Oral hearings on proposals, Rule 86(a), M.R.Civ.P. (see Title 25, ch. 20).

3-2-704. Local rules. A district court may adopt rules of court governing its practice so long as the rules are not in conflict with the rules promulgated by the supreme court of the state of Montana in accordance with this part.

History: En. Sec. 4, Ch. 16, L. 1963; R.C.M. 1947, 93-2801-4; amd. Sec. 6, Ch. 10, L. 1993.

Cross-References

Rules for courts of record, 3-1-112.

Rules by District Courts, Rule 83, M.R.Civ.P. (see Title 25, ch. 20).

3-2-705. No effect on powers of boards or commissions. This part shall not affect the power of any constitutional or statutory commission or board to make rules governing its practice.

History: **En. Sec. 5, Ch. 16, L. 1963; R.C.M. 1947, 93-2801-5.**

3-2-706. Effect on existing laws and rules. All present laws and rules relating to pleading, practice, and procedure shall be effective as rules of court until modified or superseded by subsequent court rule. Upon the adoption of any rule pursuant to this part, such laws and rules insofar as they are in conflict therewith shall thereafter be of no further force and effect.

History: **En. Sec. 6, Ch. 16, L. 1963; R.C.M. 1947, 93-2801-6.**

3-2-707. When rules effective. All rules promulgated under this part shall be effective at a time fixed by the supreme court.

History: **En. Sec. 7, Ch. 16, L. 1963; R.C.M. 1947, 93-2801-7.**

Cross-References

Effective date of Montana Rules of Civil Procedure, Rule 86(a), M.R.Civ.P. (see Title 25, ch. 20).

3-2-708. No abridgment of legislative power. This part shall not abridge the right of the legislature to enact, modify, or repeal any statute or modify or repeal any rule of the supreme court adopted pursuant thereto.

History: **En. Sec. 8, Ch. 16, L. 1963; R.C.M. 1947, 93-2801-8.**

Cross-References

Supreme Court jurisdiction, Art. VII, sec. 2, Mont. Const.

CHAPTERS 3 AND 4

RESERVED

CHAPTER 5

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Part 1

Definition of Districts and Assignment of Judges

3-5-101. Judicial districts defined. In this state there are 21 judicial districts, distributed as follows:

(1) 1st district: Lewis and Clark and Broadwater Counties;
(2) 2nd district: Silver Bow County;
(3) 3rd district: Deer Lodge, Granite, and Powell Counties;
(4) 4th district: Missoula and Mineral Counties;
(5) 5th district: Beaverhead, Jefferson, and Madison Counties;
(6) 6th district: Park and Sweet Grass Counties;
(7) 7th district: Dawson, McCone, Richland, Prairie, and Wibaux Counties;
(8) 8th district: Cascade County;
(9) 9th district: Teton, Pondera, Toole, and Glacier Counties;
(10) 10th district: Fergus, Judith Basin, and Petroleum Counties;
(11) 11th district: Flathead County;
(12) 12th district: Liberty, Hill, and Chouteau Counties;
(13) 13th district: Yellowstone, Stillwater, Carbon, and Big Horn Counties;
(14) 14th district: Meagher, Wheatland, Golden Valley, and Musselshell Counties;
(15) 15th district: Roosevelt, Daniels, and Sheridan Counties;
(16) 16th district: Custer, Carter, Fallon, Powder River, Garfield, Treasure, and Rosebud Counties;
(17) 17th district: Phillips, Blaine, and Valley Counties;
(18) 18th district: Gallatin County;
(19) 19th district: Lincoln County;
(20) 20th district: Lake and Sanders Counties;
(21) 21st district: Ravalli County.

History: En. Sec. 6256, Rev. C. 1907; re-en. Sec. 8812, R.C.M. 1921; amd. Sec. 1, Ch. 91, L. 1929; re-en. Sec. 8812, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1973; amd. Sec. 1, Ch. 517, L. 1977; R.C.M. 1947, 93-301; amd. Sec. 1, Ch. 293, L. 1983; amd. Sec. 1, Ch. 642, L. 1991.

Cross-References

Legislative determination of judicial districts, Art. VII, sec. 6, Mont. Const.

3-5-102. Number of judges. In each judicial district there must be the following number of judges of the district court:

(1) in the 2nd, 7th, 11th, 16th, and 18th districts, two judges each;
(2) in the 1st and 8th districts, three judges each;
(3) in the 4th district, four judges;
(4) in the 13th district, five judges;
(5) in all other districts, one judge each.

History: En. Sec. 1, p. 156, L. 1901; re-en. Sec. 6264, Rev. C. 1907; re-en. Sec. 8813, R.C.M. 1921; amd. Sec. 2, Ch. 91, L. 1929; re-en. Sec. 8813, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1955; amd. Sec. 1, Ch. 91, L. 1957; amd. Sec. 1, Ch. 161, L. 1959; amd. Sec. 1, Ch.

229, L. 1963; amd. Sec. 1, Ch. 14, L. 1973; amd. Sec. 22, Ch. 344, L. 1977; amd. Sec. 2, Ch. 517, L. 1977; R.C.M. 1947, 93-302(part); amd. Sec. 1, Ch. 542, L. 1979; amd. Sec. 2, Ch. 293, L. 1983.

3-5-103 through 3-5-110 reserved.

3-5-111. District courts presided over by judges of other districts. A judge of the district court of any judicial district may hold the district court in any county of another district at the request of the judge of the other district or as otherwise provided by law. A district judge shall hold the district court in a county of another district if so requested by the chief justice. The judge holding the court in the other district has the same power as within the judge's own district.

History: En. Sec. 36, C. Civ. Proc. 1895; re-en. Sec. 6270, Rev. C. 1907; re-en. Sec. 8821, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 71; re-en. Sec. 8821, R.C.M. 1935; R.C.M. 1947, 93-310; amd. Sec. 28, Ch. 697, L. 1979; amd. Sec. 1, Ch. 110, L. 1995.

Cross-References

Disqualification and substitution of judges, Title 3, ch. 1, part 8.

Jurisdiction of judges coextensive with state, 3-5-312.

Conduct of business in multicounty districts, 3-5-402.

Appointment of acting judge to replace one who enters military service, 10-2-227.

3-5-112. Authority of chief justice. (1) The chief justice may by written order assign a district judge to hold court in a county of another district if:

(a) for any cause a district court in another district is not or cannot be held in any county by a judge of the other district or acting for the other district; or

(b) the business of the court in the other district is not or cannot be dispatched with reasonable promptness.

(2) A district judge assigned to another district pursuant to subsection (1) shall hold court in the other district for the time specified in the order.

History: En. Sec. 164, C. Civ. Proc. 1895; re-en. Sec. 6312, Rev. C. 1907; amd. Sec. 1, Ch. 33, L. 1915; re-en. Sec. 8823, R.C.M. 1921; re-en. Sec. 8823, R.C.M. 1935; R.C.M. 1947, 93-312; amd. Sec. 2, Ch. 110, L. 1995.

Cross-References

Jurisdiction of judges coextensive with state, 3-5-312.

Appointment of acting judge to replace one who enters military service, 10-2-227.

3-5-113. Judges pro tempore — special masters — scope of authority in criminal and civil cases. (1) (a) A civil action in the district court may be tried by a judge pro tempore or special master, who must be a member of the bar of the state, agreed upon in writing by the parties litigant or their attorneys of record, appointed by the court as provided in 3-5-115, and sworn to try the cause before entering upon the duties in trying the cause.

(b) The judge pro tempore or special master has the authority and power of an elected district court judge in the particular civil action tried in the manner provided for in this subsection (1). All proceedings before a judge pro tempore or special master must be conducted in accordance with the rules of evidence and procedure governing district courts.

(c) Any order, judgment, or decree made or rendered in a civil case by the judge pro tempore or special master has the same force and effect as if made or rendered by the district court with the regular judge presiding.

(2) (a) Preliminary, nondispositive proceedings in criminal actions in a district court may be conducted by a judge pro tempore or special master. The

judge pro tempore or special master in a criminal case must be appointed by a district court judge or judges as provided in 3-5-122.

(b) All proceedings before a judge pro tempore or special master in a criminal case must be conducted in accordance with the rules of evidence and procedure governing district courts.

(c) The judge pro tempore or special master in a criminal case has the authority and power of a district court judge to issue orders pursuant to Title 46, chapter 9, concerning bail and conditions of release or detention of persons pending trial, and to conduct arraignments, initial appearances on warrants, and initial appearances on probation revocations. An order made by the judge pro tempore or special master in a criminal case has the same force and effect as if made by a district court judge.

(d) Within 10 days after issuance of an order by a judge pro tempore or special master in a criminal case, a party may object to the order as provided by rules of court and a district court judge shall make a de novo determination of that portion of the order to which objection is made. The district court judge may accept, reject, or modify the order in whole or in part. The district court judge may also receive further evidence or recommit the matter to the judge pro tempore or special master with instructions.

(e) All proceedings before a judge pro tempore or special master in a criminal case must be conducted in a suitable room in the courthouse, subject to the provisions of Title 46 relating to the use of two-way electronic audio-video communication. All records must be filed and kept in accordance with the rules governing the district court.

History: En. Sec. 37, C. Civ. Proc. 1895; re-en. Sec. 6271, Rev. C. 1907; re-en. Sec. 8822, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 72; re-en. Sec. 8822, R.C.M. 1935; R.C.M. 1947, 93-311; amd. Sec. 1, Ch. 663, L. 1987; amd. Sec. 1, Ch. 394, L. 1995.

Cross-References

Jurisdiction of judges coextensive with state, 3-5-312.

Conduct of business in multicounty districts, 3-5-402.

3-5-114. Qualifications. Any of the following individuals may act as a judge pro tempore:

(1) a member of the bar of the state who meets the qualifications for judge of the district court as provided in 3-5-202;

(2) a retired judge of the district court; or

(3) a retired justice of the supreme court.

History: En. Sec. 2, Ch. 663, L. 1987.

Cross-References

Judge pro tempore's right to judicial retirement allowance, 19-5-501.

3-5-115. Agreement, petition, and appointment of judge pro tempore — waiver of jury trial. (1) Prior to trial and upon written agreement of all the parties to a civil action, the parties may petition for the appointment of a judge pro tempore. If the district court judge having jurisdiction over the case where the action was filed finds that the appointment is in the best interest of the parties and serves justice, he may appoint the judge pro tempore nominated by the parties to preside over the whole or any aspect of the action as if the regular district court judge were presiding.

(2) An appointment of a judge pro tempore constitutes a waiver of the right to trial by jury by any party having the right.

History: En. Sec. 3, Ch. 663, L. 1987.

3-5-116. Compensation — expenses. (1) The salary of the judge pro tempore or special master and the court reporter and all other expenses associated with the trial are the responsibility of the parties to the action. The amount of salaries and other expenses and the manner of payment must be established by written agreement.

(2) The judge pro tempore or special master may not withhold judgment as security for compensation.

History: En. Sec. 4, Ch. 663, L. 1987; amd. Sec. 3, Ch. 394, L. 1995.

3-5-117. Rooms — records. (1) Each trial before a judge pro tempore must be conducted in a suitable room in the courthouse in the judicial district where the action was filed, unless the parties or their attorneys stipulate in writing that the trial may be held elsewhere.

(2) All records must be filed and kept in accordance with the rules governing the district court where the action was filed.

History: En. Sec. 5, Ch. 663, L. 1987.

3-5-118. Appeals. An appeal from a final judgment of a judge pro tempore must be made in the same manner as an appeal from a final judgment of the district court.

History: En. Sec. 6, Ch. 663, L. 1987.

3-5-119 through 3-5-121 reserved.

3-5-122. Judge pro tempore or special master in criminal cases — appointment. (1) One or more judges of a judicial district may designate a judge pro tempore or a special master in a criminal case to hear and determine any preliminary, nondispositive matter pending in a criminal case before the court if the district court judge or judges find that the appointment serves justice.

(2) Any of the following individuals may act as a special master in a criminal case:

(a) a justice of the peace or a city judge;
(b) a retired district court judge;
(c) a retired supreme court justice; or
(d) a member of the state bar.

History: En. Sec. 2, Ch. 394, L. 1995.

Part 2
District Court Judges

Part Cross-References

Judicial Nomination Commission, Title 3, ch. 1, part 10.

Montana judges' retirement system, Title 19, ch. 5.

3-5-201. Election and oath of office. (1) The judges of the district court, except judges pro tempore, must be elected by the qualified voters of the district.

(2) Except as provided in subsection (1), each judge of a district court must, as soon as he has taken and subscribed his official oath, file the same in the office of the secretary of state.

History: (1)En. Sec. 1, p. 156, L. 1901; re-en. Sec. 6264, Rev. C. 1907; re-en. Sec. 8813, R.C.M. 1921; amd. Sec. 2, Ch. 91, L. 1929; re-en. Sec. 8813, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1955; amd. Sec. 1, Ch. 91, L. 1957; amd. Sec. 1, Ch. 161, L. 1959; amd. Sec. 1, Ch. 229, L. 1963; amd. Sec. 1, Ch. 14, L. 1973; amd. Sec. 22, Ch. 344, L. 1977; amd. Sec. 2, Ch. 517, L. 1977; Sec. 93-302, R.C.M. 1947; (2)En. Sec. 1014, Pol. C. 1895; re-en. Sec. 366, Rev. C. 1907; re-en. Sec. 434, R.C.M. 1921; Cal. Pol. C. Sec. 909; re-en. Sec. 434, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1949; Sec. 59-417, R.C.M. 1947; R.C.M. 1947, 59-417(3), 93-302(part); amd. Sec. 9, Ch. 663, L. 1987.

3-5-202. Qualifications and residence. (1) No person is eligible for the office of judge of a district court unless he is a citizen of the United States, has resided in the state 2 years immediately before taking office, and has been admitted to practice law in Montana for at least 5 years prior to the date of appointment or election.

(2) A judge of a district court need not be a resident of the district for which he is elected or appointed at the time of his election or appointment, but after his election or appointment, he must reside in the district for which he is elected or appointed during his term of office.

History: En. Sec. 161, C. Civ. Proc. 1895; re-en. Sec. 6309, Rev. C. 1907; re-en. Sec. 8863, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 157; re-en. Sec. 8863, R.c.M. 1935; amd. Sec. 1, Ch. 15, L. 1973; amd. Sec. 29, Ch. 344, L. 1977; R.C.M. 1947, 93-702(part); amd. Sec. 1, Ch. 406, L. 1989.

Cross-References

Qualifications of District Court Judges, Art. VII, sec. 9, Mont. Const.

Determination of residency, 1-1-215.

3-5-203. Term of office. The term of office of judges of the district court is 6 years and begins on the first Monday of January next succeeding their election.

History: Ap. p. Sec. 33, C. Civ. Proc. 1895; re-en. Sec. 6267, Rev. C. 1907; re-en. Sec. 8818, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 68; re-en. Sec. 8818, R.C.M. 1935; Sec. 93-307, R.C.M. 1947; Ap. p. Sec. 1, p. 156, L. 1901; re-en. Sec. 6264, Rev. C. 1907; re-en. Sec. 8813, R.C.M. 1921; amd. Sec. 2, Ch. 91, L. 1929; re-en. Sec. 8813, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1955; amd. Sec. 1, Ch. 91, L. 1957; amd. Sec. 1, Ch. 161, L. 1959; amd. Sec. 1, Ch. 229, L. 1963; amd. Sec. 1, Ch. 14, L. 1973; amd. Sec. 22, Ch. 344, L. 1977; amd. Sec. 2, Ch. 517, L. 1977; Sec. 93-302, R.C.M. 1947; R.C.M. 1947, 93-302(part), 93-307.

Cross-References

Salary and term of District Court Judges, Art. VII, sec. 7, Mont. Const.

3-5-204. Computation of term of office. The years during which a judge of a district court is to hold office are to be computed respectively from and including the first Monday of January of any one year to and excluding the first Monday of January of the next succeeding year.

History: En. Sec. 34, C. Civ. Proc. 1895; re-en. Sec. 6268, Rev. C. 1907; re-en. Sec. 8819, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 69; re-en. Sec. 8819, R.C.M. 1935; R.C.M. 1947, 93-308.

3-5-205 through 3-5-210 reserved.

3-5-211. Salaries and expenses of district judges. (1) Subject to subsection (2), the annual salary of each district judge is as follows:

(a) $63,178;

(b) $64,979 beginning July 1, 1995;
(c) $67,513 beginning January 1, 1996.

(2) Prior to June 30, 1996, and prior to June 30 of each even-numbered year thereafter, the department of administration shall conduct a salary survey of judges of courts of general jurisdiction similar to the Montana district courts for the states of North Dakota, South Dakota, Wyoming, and Idaho. The department shall include the salary for a Montana district court judge in determining the average salary. If the average salary is greater than the salary for a district court judge in Montana, then beginning July 1, 1997, the average is the new salary for that position. In each year following the year in which a survey is conducted, the average salary is the new salary for the position. A district court judge's salary may not be reduced.

(3) Actual and necessary expenses for each district judge shall be the travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of his official duties.

History: En. Sec. 1, Ch. 176, L. 1919; re-en. Sec. 8814, R.C.M. 1921; re-en. Sec. 8814, R.C.M. 1935; amd. Sec. 1, Ch. 114, L. 1947; amd. Sec. 1, Ch. 84, L. 1951; amd. Sec. 1, Ch. 247, L. 1955; amd. Sec. 1, Ch. 198, L. 1959; amd. Sec. 1, Ch. 187, L. 1961; amd. Sec. 2, Ch. 212, L. 1963; amd. Sec. 2, Ch. 308, L. 1967; amd. Sec. 1, Ch. 322, L. 1969; amd. Sec. 1, Ch. 4, 2nd Ex. L. 1971; amd. Sec. 2, Ch. 377, L. 1974; amd. Sec. 3, Ch. 461, L. 1977; R.C.M. 1947, 93-303; amd. Sec. 2, Ch. 528, L. 1979; amd. Sec. 1, Ch. 651, L. 1979; amd. Sec. 2, Ch. 605, L. 1981; amd. Sec. 2, Ch. 656, L. 1983; amd. Sec. 2, Ch. 693, L. 1985; amd. Sec. 4, Ch. 462, L. 1989; amd. Sec. 2, Ch. 656, L. 1991; amd. Sec. 14, Ch. 455, L. 1995.

Cross-References

Salary and term of District Court Judges, Art. VII, sec. 7, Mont. Const.

Salaries of Supreme Court Justices, 2-16-403.

County levy for District Court expenses, 7-6-2511.

Fees of Clerk of District Court, 25-1-201.

3-5-212. Repealed. Sec. 21, Ch. 3, L. 1985.

History: En. Sec. 1, Ch. 85, L. 1917; re-en. Sec. 8815, R.C.M. 1921; re-en. Sec. 8815, R.C.M. 1935; R.C.M. 1947, 93-304(part); amd. Sec. 2, Ch. 375, L. 1981.

3-5-213. Expenses when out of district. A judge who sits in the place of another judge in the trial or hearing of an action or proceeding in a district other than his own or in the supreme court or who attends a conference of judges in Helena called by the chief justice of the supreme court shall be paid his actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, while engaged in that service as follows:

(1) his travel expenses in going from the county seat which he makes his place of residence to the place of trial, hearing, or conference and return; and

(2) his board and lodging while engaged in the trial, hearing, or conference.

History: En. Sec. 1, Ch. 3, L. 1907; re-en. Sec. 293, Rev. C. 1907; re-en. Sec. 8816, R.C.M. 1921; re-en. Sec. 8816, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1953; amd. Sec. 61, Ch. 439, L. 1975; amd. Sec. 23, Ch. 344, L. 1977; R.C.M. 1947, 93-305; amd. Sec. 16, Ch. 21, L. 1979; amd. Sec. 3, Ch. 528, L. 1979.

Cross-References

County levy for District Court expenses, 7-6-2511.

3-5-214. Certification and filing of expense claim. As soon as his services in connection with the trial, hearing, or conference are concluded, the judge shall certify in detail his actual and necessary travel expenses as specified in 3-5-213, and shall file the claim with the state to be processed as provided by law.

History: En. Sec. 2, Ch. 3, L. 1907; re-en. Sec. 294, Rev. C. 1907; re-en. Sec. 8817, R.C.M. 1921; re-en. Sec. 8817, R.C.M. 1935; amd. Sec. 31, Ch. 97, L. 1961; R.C.M. 1947, 93-306; amd. Sec. 17, Ch. 21, L. 1979; amd. Sec. 4, Ch. 528, L. 1979.

3-5-215. Expenses when not in county of residence. A district judge of a judicial district composed of more than one county who, for the purpose of holding court and disposing of judicial business, goes to a county of his judicial district other than the county in which he resides and therein holds court or transacts judicial business shall be paid his actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred on account thereof from the time he leaves his place of residence until he returns thereto.

History: En. Sec. 1, Ch. 91, L. 1911; re-en. Sec. 8824, R.C.M. 1921; re-en. Sec. 8824, R.C.M. 1935; amd. Sec. 2, Ch. 455, L. 1973; amd. Sec. 62, Ch. 439, L. 1975; amd. Sec. 24, Ch. 344, L. 1977; R.C.M. 1947, 93-313; amd. Sec. 5, Ch. 528, L. 1979.

Cross-References

County levy for District Court expenses, 7-6-2511.

3-5-216. Itemized statements — verification — filing. (1) On the first of each month or within 3 days thereafter, such district judge who may desire to avail himself of the provisions of 3-5-215 shall make out an itemized claim against the state of Montana showing with dates and particulars his actual and necessary travel expenses for the preceding month.

(2) He shall verify such claim by certifying that the items of the claim are true and correct and are wholly unpaid and that the expenditures therein enumerated were made in the discharge of official business while away from home.

(3) He shall then file such claim with the state to be processed as provided by law.

History: En. Sec. 2, Ch. 91, L. 1911; re-en. Sec. 8825, R.C.M. 1921; re-en. Sec. 8825, R.C.M. 1935; amd. Sec. 1, Ch. 67, L. 1951; amd. Sec. 10, Ch. 97, L. 1961; R.C.M. 1947, 93-314; amd. Sec. 6, Ch. 528, L. 1979.

Part 3

District Court Jurisdiction

Part Cross-References

District Court jurisdiction, Art. VII, sec. 4, Mont. Const.

Montana Youth Court Act, Title 41, ch. 5.

Driver's license seized by peace officer — right of appeal to court, 61-8-403.

3-5-301. Kinds of jurisdiction. The jurisdiction of the district court is of two kinds:

(1) original; and

(2) appellate.

History: En. Sec. 40, C. Civ. Proc. 1895; re-en. Sec. 6274, Rev. C. 1907; re-en. Sec. 8828, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 75; re-en. Sec. 8828, R.C.M. 1935; R.C.M. 1947, 93-317.

Cross-References

City attorney to prosecute appeals, 3-11-301.

Appeals to District Courts, Rule 81(b), M.R.Civ.P. (see Title 25, ch. 20); Rule 52(b), M.R.App.P. (see Title 25, ch. 21); Title 25, ch. 33.

Appeal from Justice's or City Court, 25-33-301.

Appeal from Small Claims Court, 25-35-803.

3-5-302. Original jurisdiction. (1) Except as provided in subsection (6), the district court has original jurisdiction in:

(a) all criminal cases amounting to felony;

(b) all civil and probate matters;

(c) all cases at law and in equity;

(d) all cases of misdemeanor not otherwise provided for; and

(e) all such special actions and proceedings as are not otherwise provided for.

(2) The district court has concurrent original jurisdiction with the justice's court in the following criminal cases amounting to misdemeanor:

(a) misdemeanors arising at the same time as and out of the same transaction as a felony or misdemeanor offense charged in district court;

(b) misdemeanors resulting from the reduction of a felony or misdemeanor offense charged in the district court; and

(c) misdemeanors resulting from a finding of a lesser included offense in a felony or misdemeanor case tried in district court.

(3) The district court has exclusive original jurisdiction in all civil actions that might result in a judgment against the state for the payment of money.

(4) The district court has the power of naturalization and of issuing papers therefor in all cases where it is authorized to do so by the laws of the United States.

(5) The district court and its judges have power to issue, hear, and determine writs of mandamus, quo warranto, certiorari, prohibition, and injunction, other original remedial writs, and all writs of habeas corpus on petition by or on behalf of any person held in actual custody in their respective districts. Injunctions and writs of prohibition and habeas corpus may be issued and served on legal holidays and nonjudicial days.

(6) (a) Except as provided in subsection (6)(b), a contest of a ballot issue submitted by initiative or referendum may be brought prior to the election only if it is filed within 30 days after the date on which the issue was certified to the governor, as provided in 13-27-308, and only for the following causes:

(i) violation of the law relating to qualifications for inclusion on the ballot;

(ii) constitutional defect in the substance of a proposed ballot issue; or

(iii) illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.

(b) A contest of a ballot issue based on subsection (6)(a)(i) or (6)(a)(iii) may be brought at any time after discovery of illegal petition signatures or an erroneous or fraudulent count or canvass of petition signatures.

(c) Nothing in subsection (6) limits the right to challenge a measure enacted by a vote of the people.

History: En. Sec. 41, C. Civ. Proc. 1895; re-en. Sec. 6275, Rev. C. 1907; re-en. Sec. 8829, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 76; re-en. Sec. 8829, R.C.M. 1935; amd. Sec. 1, Ch. 11, L. 1973; R.C.M. 1947, 93-318; amd. Sec. 1, Ch. 409, L. 1979; amd. Sec. 1, Ch. 594, L. 1981; amd. Sec. 1, Ch. 441, L. 1985; amd. Sec. 2, Ch. 540, L. 1987.

Cross-References

Right to habeas corpus, Art. II, sec. 19, Mont. Const.

Legal holidays, 1-1-216.

Nonjudicial days for certain purposes, 3-1-302.

Exception to District Court jurisdiction over injunctions, 3-2-205.

Jurisdiction of persons, Rule 4B, M.R.Civ.P. (see Title 25, ch. 20).

Injunctions, Title 27, ch. 19.

Writ of review (certiorari), 27-25-102.

Writ of mandamus, 27-26-102.

Writ of prohibition, 27-27-102.

Proceeding for unlawful assertion of authority, 27-28-101.

Youth Court — transfer to District Court, 41-5-206, 41-5-208.

Youth Court — Extended Jurisdiction Prosecution Act, Title 41, ch. 5, part 11.

Jurisdiction of all public offenses not otherwise provided for, 46-2-201.

Habeas corpus — rights and procedures, Title 46, ch. 22.

Filing human rights complaint in or removing it to District Court, 49-2-509.

Jurisdiction of probate and succession matters, 72-1-202.

Jurisdiction over action for injury in another state caused by pollution originating in Montana, Title 75, ch. 16, part 1.

3-5-303. Appellate jurisdiction. Except as provided in 46-17-203, the district court has appellate jurisdiction in cases arising in justices' courts and other courts of limited jurisdiction in their respective districts as may be prescribed by law and consistent with the constitution.

History: En. Sec. 42, C. Civ. Proc. 1895; re-en. Sec. 6276, Rev. C. 1907; re-en. Sec. 8830, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 77; re-en. Sec. 8830, R.C.M. 1935; R.C.M. 1947, 93-319; amd. Sec. 7, Ch. 466, L. 1979; amd. Sec. 1, Ch. 277, L. 1989.

Cross-References

City attorney to prosecute appeals, 3-11-301.

Appeal of decisions of school district trustees, 20-3-210.

Appeal to District Courts, Rule 81(b), M.R.Civ.P. (see Title 25, ch. 20); Rule 52, M.R.App.P. (see Title 25, ch. 21); Title 25, ch. 33.

Waiver of undertaking requirements for indigents, 25-33-201.

Appeal to District Court tried anew, 25-33-301, 46-17-311.

3-5-304. Process. The process of the district court extends to all parts of the state.

History: En. Sec. 43, C. Civ. Proc. 1895; re-en. Sec. 6277, Rev. C. 1907; re-en. Sec. 8831, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 78; re-en. Sec. 8831, R.C.M. 1935; R.C.M. 1947, 93-320(part).

3-5-305 through 3-5-310 reserved.

3-5-311. Powers of judges at chambers. (1) The judge of the district court may at chambers:

(a) issue, hear, and determine writs of mandamus, quo warranto, certiorari, prohibition, and injunction, other original and remedial writs, and all writs of habeas corpus on petition by or on behalf of any person held in actual custody in his district;

(b) grant all orders and writs which are usually granted in the first instance upon an ex parte application and hear and dispose of such orders and writs;

(c) hear and determine any matter necessary in the exercise of his powers in matters of probate or in any action or proceeding provided by law and any action in which all party defendants have made default;

(d) issue any process, make any order, and make and enter any default judgment.

(2) When default judgments are entered in default cases, as herein provided, the judge shall forward to the clerk of the court of the county in which

the action is pending the judgment so made, together with a minute of the proceedings had thereon, which shall be by said clerk incorporated into the minutes of the court.

(3) If a jury is necessary, the judge may open court and obtain a jury as in other cases.

History: En. Sec. 477, p. 138, Bannack Stat.; amd. Sec. 624, p. 161, Cod. Stat. 1871; re-en. Sec. 684, 1st Div. Rev. Stat. 1879; re-en. Sec. 704, 1st Div. Comp. Stat. 1887; amd. Sec. 171, C. Civ. Proc. 1895; re-en. Sec. 6314, Rev. C. 1907; re-en. Sec. 8867, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 166; amd. Sec. 1, Ch. 79, L. 1931; re-en. Sec. 8867, R.C.M. 1935; R.C.M. 1947, 93-802.

Cross-References

Right to habeas corpus, Art. II, sec. 19, Mont. Const.

Injunctions, 3-2-205.

Clerk to attend judge at chambers, 3-5-501.

Orders in chambers, Rule 77(b), M.R.Civ.P. (see Title 25, ch. 20).

Injunctions, Title 27, ch. 19.

Writ of review (certiorari), 27-25-102.

Writ of mandamus, 27-26-102.

Writ of prohibition, 27-27-102.

Habeas corpus — rights and procedures, Title 46, ch. 22.

3-5-312. Jurisdiction of judges coextensive with the state. (1) The jurisdiction of the judges of the district courts of the state of Montana in rendering and signing judgments, making findings and rendering decrees, and making orders to show cause and all ex parte orders, in chambers, shall be coextensive with the boundaries of the state of Montana as to all matters presented to or heard by them and of which they have jurisdiction.

(2) Such judgments, findings, decrees, and orders, when so rendered, made, or signed, shall have the same force and effect as to matters under their jurisdiction as if done in open court in the county in which the action, proceeding, or matter is pending or was heard.

History: En. Sec. 1, Ch. 53, L. 1923; re-en. Sec. 8867.1, R.C.M. 1935; R.C.M. 1947, 93-803.

Cross-References

District Courts presided over by judges of other districts, 3-5-111.

Judges pro tempore — special masters, 3-5-113.

Conduct of business in multicounty districts, 3-5-402.

What considered adjudged in judgment, 26-3-102.

Part 4

Terms and Location of District Courts

3-5-401. Terms of court. (1) The district court of each county which is a judicial district by itself has no terms and must always be open for the transaction of business, except on legal holidays and nonjudicial days.

(2) (a) In each district where two or more counties are united, the judge thereof must fix the term of court in each county in his district and there must be at least four terms a year in each county. Any order of the judge of such district fixing terms of court shall be filed in the office of the clerk of the district court in each county of his district and shall remain in effect until further order of the judge.

(b) Nothing in this section shall be construed to prevent the calling of a special term of court, with or without a jury, when in the opinion of the presiding judge the same is necessary.

(c) The district judge may adjourn a term of district court in one county to a future day certain and in the meantime hold court in another county.

History: En. Sec. 38, C. Civ. Proc. 1895; amd. Sec. 1, p. 156, L. 1901; re-en. Sec. 6272, Rev. C. 1907; re-en. Sec. 8826, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 73; re-en. Sec. 8826, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1959; R.C.M. 1947, 93-315(part).

Cross-References

Legal holidays, 1-1-216.

Nonjudicial days for certain purposes, 3-1-302.

3-5-402. Adjournments — conduct of business in multicounty districts. (1) Adjournments from day to day or from time to time are to be construed as recesses in the session or term and shall not prevent the court from sitting at any time.

(2) In districts where two or more counties are united, court may be held, causes tried with or without a jury, and business transacted in any and all of the counties of the district continuously and simultaneously, with or without recesses, and without regard to the beginning or ending of any of the terms in any of the counties of the district.

(3) The judge of such district may hold court in one county of such district, try causes with or without a jury, and transact business, while at the same time court may be held, causes tried with or without a jury, and business transacted in any other county of such district by the same judge or by any other district judge of the state, when requested or assigned thereto under any of the provisions of the statutes of Montana.

History: En. Sec. 39, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 184, L. 1907; re-en. Sec. 6273, Rev. C. 1907; re-en. Sec. 8827, R.C.M. 1921; re-en. Sec. 8827, R.C.M. 1935; amd. Sec. 2, Ch. 144, L. 1959; R.C.M. 1947, 93-316.

3-5-403. Terms and departments in multijudge districts. (1) In each judicial district that has more than one judge, as many terms or sessions of court may be held at the same time as there are judges in the district.

(2) The judges elected or appointed to hold office in each judicial district having more than one judge shall divide the court into departments, prescribe the order of business, and make rules for the government of the court. Each department must be numbered, and each judge must be assigned to one of the numbered departments.

(3) The judges shall apportion the business of the court among themselves as equally as possible. In case of their failure for any cause to make the apportionment or to assign each judge to a numbered department, the supreme court, upon application of any interested person, shall make an order apportioning the business and assigning each judge to a numbered department and cause the order to be entered upon the minute book of the district court in each county in the district. The order remains in full force and effect until modified or repealed by the authority making it. The failure or refusal of any district judge to carry out the terms of the order constitutes a contempt of the supreme court.

History: (1) thru (3)En. Sec. 44, C. Civ. Proc. 1895; re-en. Sec. 6278, Rev. C. 1907; amd. Sec. 1, Ch. 7, L. 1915; re-en. Sec. 8832, R.C.M. 1921; re-en. Sec. 8832, R.C.M. 1935; amd. Sec. 1, Ch. 229, L. 1961; R.C.M. 1947, 93-321; (4)En. Sec. 3, Ch. 542, L. 1979; amd. Sec. 4, Ch. 18, L. 1995.

3-5-404. When sheriff to provide facilities. (1) If suitable rooms for holding the district court and chambers of the judge of said court be not provided in any county by the board of county commissioners thereof, together with the attendants, furniture, fuel, lights, and stationery sufficient for the transaction of business, the court or the judge thereof may direct the sheriff of the county to provide such rooms, attendants, furniture, fuel, lights, and stationery.

(2) The expenses incurred, certified by the judge to be correct, are a charge against the county treasury and must be paid out of the general fund thereof.

History: En. Sec. 142, C. Civ. Proc. 1895; re-en. Sec. 6302, Rev. C. 1907; re-en. Sec. 8856, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 144; re-en. Sec. 8856, R.C.M. 1935; R.C.M. 1947, 93-513.

Cross-References

Exception to limitation on expenditures of District Judge, 7-6-2324.

3-5-405. Change of place of holding court in emergency. (1) The judge of the district court authorized to hold or preside at a court appointed to be held at a particular place may, by an order filed with the clerk and published as he may prescribe, direct that the court be held or continued at any place in the county other than that appointed when war, insurrection, pestilence, or other public calamity, or the danger thereof, or the destruction or danger of the public building appointed for the holding the court may render it necessary.

(2) He may, in the same manner, revoke the order and, in his discretion, appoint another place in the same county for holding the court.

History: En. Sec. 140, C. Civ. Proc. 1895; re-en. Sec. 6300, Rev. C. 1907; re-en. Sec. 8854, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 142; re-en. Sec. 8854, R.C.M. 1935; R.C.M. 1947, 93-511.

Cross-References

Seat and continuity of government during emergency, Art. III, sec. 2, Mont. Const.

Disaster and emergency services, Title 10, ch. 3.

3-5-406. Parties to appear at place appointed. When the court is held at the place appointed, as provided in 3-5-405, every person held to appear at the court must appear at the place so appointed.

History: En. Sec. 141, C. Civ. Proc. 1895; re-en. Sec. 6301, Rev. C. 1907; re-en. Sec. 8855, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 143; re-en. Sec. 8855, R.C.M. 1935; R.C.M. 1947, 93-512.

3-5-407. Sheriff to act as crier. The sheriff in attendance upon district court must act as the crier thereof, call the parties and witnesses and all other persons bound to appear before the court, and make proclamation of the opening and adjournment of the court and of any other matter under its direction.

History: En. Sec. 4397, Pol. C. 1895; re-en. Sec. 3026, Rev. C. 1907; re-en. Sec. 4790, R.C.M. 1921; Cal. Pol. C. Sec. 4189; re-en. Sec. 4790, R.C.M. 1935; R.C.M. 1947, 16-2718; amd. Sec. 18, Ch. 21, L. 1979.

Cross-References

Adjournment for absence of judge, 3-1-304, 3-1-305.

Duty of Constable similar to Sheriff, 3-10-702.

Part 5

Clerk of the District Court

Part Cross-References

Provision for Clerk of District Court, Art. XI, sec. 3, Mont. Const.

Limit on number of deputy District Court Clerks, 7-4-3006.

Membership in associations of Clerks of District Courts, 7-5-2143.

3-5-501. General duties — electronic filing and storage of court records. (1) The clerk of the district court, in addition to keeping the records and performing the duties prescribed elsewhere, shall:

(a) take charge of and safely keep or dispose of according to law all books, papers, and records that are filed or deposited in the clerk's office;

(b) act as clerk of the district court and attend each term or session of the court and upon the judges at chambers when required;

(c) issue all process and notices required to be issued;

(d) enter all orders, judgments, and decrees proper to be entered;

(e) keep in each court a register of actions, as provided in 3-5-504;

(f) keep for the district court two separate indexes, one labeled "General Index—Plaintiffs" and the other labeled "General Index—Defendants", which must be in the form prescribed in 3-5-502;

(g) keep a minute book, which must contain the daily proceedings of court, which may be signed by the clerk;

(h) keep a fee book, in which must be shown in an itemized form all fees received for any services rendered in the capacity as clerk.

(2) The clerk of the district court may elect to keep court documents by means of electronic filing or storage, or both, as provided in 3-1-114 and 3-1-115, in lieu of or in addition to keeping paper records.

History: Ap. p. Sec. 4440, Pol. C. 1895; re-en. Sec. 3048, Rev. C. 1907; re-en. Sec. 4815, R.C.M. 1921; Cal. Pol. C. Sec. 4204; re-en. Sec. 4815, R.C.M. 1935; amd. Sec. 10, Ch. 344, L. 1977; Sec. 16-3001, R.C.M. 1947; Ap. p. Sec. 4441, Pol. C. 1895; re-en. Sec. 3049, Rev. C. 1907; re-en. Sec. 4816, R.C.M. 1921; re-en. Sec. 4816, R.C.M. 1935; Sec. 16-3002, R.C.M. 1947; R.C.M. 1947, 16-3001(part), 16-3002; amd. Sec. 1, Ch. 104, L. 1981; amd. Sec. 4, Ch. 174, L. 1995.

Cross-References

Clerk to include interest in judgment, 25-9-204.

Clerk to record returned execution when levy on real property, 25-13-405.

Entry of judgment, Rule 58, M.R.Civ.P. (see Title 25, ch. 20).

Orders by Clerk, Rule 77(c), M.R.Civ.P. (see Title 25, ch. 20).

Notice of orders or judgments, Rule 77(d), M.R.Civ.P. (see Title 25, ch. 20).

3-5-502. Indexes to court records. Each clerk of court in each county of the respective judicial districts of the state shall keep, in addition to the records required by law, an index called "General Index—Plaintiffs" and also a second index to be called "General Index—Defendants". Each index shall be in a form determined by the clerk to best fulfill the needs of the court and other users of the index and shall contain, at a minimum, those entries required by 3-5-503.

History: En. Sec. 4442, Pol. C. 1895; re-en. Sec. 3050, Rev. C. 1907; re-en. Sec. 4817, R.C.M. 1921; re-en. Sec. 4817, R.C.M. 1935; R.C.M. 1947, 16-3003; amd. Sec. 2, Ch. 104, L. 1981.

3-5-503. Duties concerning indexes. Said clerk shall cause to be made in each index correct entries, under the appropriate headings, of each and every action begun in the court of which he is clerk, entering them alphabetically by the name of the plaintiff in the General Index—Plaintiffs and alphabetically by the name of the defendants in the General Index—Defendants.

History: **En. Sec. 4443, Pol. C. 1895; re-en. Sec. 3051, Rev. C. 1907; re-en. Sec. 4818, R.C.M. 1921; re-en. Sec. 4818, R.C.M. 1935; R.C.M. 1947, 16-3004; amd. Sec. 3, Ch. 104, L. 1981.**

Cross-References

Clerk to record returned execution when levy on real property, 25-13-405.

3-5-504. Register of actions. The clerk must keep among the records of the court a register of actions. He must enter therein the title of the action with brief notes under it, from time to time, of all papers filed and proceedings had therein. The register must also state the names of the attorneys and all fees charged in each action.

History: **Ap. p. Sec. 499, p. 233, L. 1867; re-en. Sec. 576, p. 153, Cod. Stat. 1871; re-en. Sec. 517, p. 176, L. 1877; re-en. Sec. 517, 1st Div. Rev. Stat. 1879; re-en. Sec. 534, 1st Div. Comp. Stat. 1887; re-en. Sec. 1896, C. Civ. Proc. 1895; re-en. Sec. 7189, Rev. C. 1907; re-en. Sec. 9822, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1052; re-en. Sec. 9822, R.C.M. 1935; Sec. 93-8707, R.C.M. 1947; Ap. p. Sec. 4440, Pol. C. 1895; re-en. Sec. 3048, Rev. C. 1907; re-en. Sec. 4815, R.C.M. 1921; Cal. Pol. C. Sec. 4204; re-en. Sec. 4815, R.C.M. 1935; amd. Sec. 10, Ch. 344, L. 1977; Sec. 16-3001, R.C.M. 1947; R.C.M. 1947, 16-3001(part), 93-8707.**

3-5-505. Register of criminal actions. The clerk of the district court shall keep a book called "Register of Criminal Actions", which must have a proper index and in which must be entered the title and number of the action with a memorandum of every paper filed and order or proceeding had therein, with the date thereof, and a memorandum of the name of every witness, the number of days he attended, and his witness fees.

History: **En. Sec. 4440, Pol. C. 1895; re-en. Sec. 3048, Rev. C. 1907; re-en. Sec. 4815, R.C.M. 1921; Cal. Pol. C. Sec. 4204; re-en. Sec. 4815, R.C.M. 1935; amd. Sec. 10, Ch. 344, L. 1977; R.C.M. 1947, 16-3001(part).**

3-5-506. Index of bonds in criminal cases. Clerks of the district courts of the counties in the state of Montana shall keep proper books for indexing bonds given in criminal cases. All bonds filed therein shall be entered showing the title and docket number of the case in which such bond is filed, the names of principals and sureties on such bonds in alphabetical order, the date and amount of the bond, and upon its release, the date of the order or authority for such release.

History: **En. Sec. 1, Ch. 47, L. 1923; re-en. Sec. 4818.1, R.C.M. 1935; R.C.M. 1947, 16-3005.**

3-5-507. Judgment book. The clerk must keep with the records of the court a book to be called the "Judgment Book", in which judgments must be entered.

History: **En. Sec. 201, p. 174, L. 1867; re-en. Sec. 241, p. 77, Cod. Stat. 1871; re-en. Sec. 292, p. 115, L. 1877; re-en. Sec. 292, 1st Div. Rev. Stat. 1879; re-en. Sec. 304, 1st Div. Comp. Stat. 1887; amd. Sec. 1194, C. Civ. Proc. 1895; re-en. Sec. 6804, Rev. C. 1907; re-en. Sec. 9407, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 668; re-en. Sec. 9407, R.C.M. 1935; R.C.M. 1947, 93-5705.**

Cross-References

Clerk to include interest in judgment, 25-9-204.

Entry of judgment, Rule 58, M.R.Civ.P. (see Title 25, ch. 20).

3-5-508. Docket. The docket is a book which the clerk keeps in his office, with each page divided into eight columns and headed as follows: judgment debtors; judgment creditors; judgment, time of entry; where entered in judgment book; appeals, when taken; judgment of appellate court; satisfaction of judgment, when entered. If judgment be for the recovery of money or damages, the amount must be stated in the docket under the head of judgment. If the judgment be for any other relief, a memorandum of the general character of the relief granted must be stated. The names of the defendants must be entered in alphabetical order.

History: En. Sec. 205, p. 174, L. 1867; re-en. Sec. 245, p. 78, Cod. Stat. 1871; re-en. Sec. 296, p. 116, L. 1877; re-en. Sec. 296, 1st Div. Rev. Stat. 1879; re-en. Sec. 308, 1st Div. Comp. Stat. 1887; re-en. Sec. 1198, C. Civ. Proc. 1895; re-en. Sec. 6808, Rev. C. 1907; re-en. Sec. 9411, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 672; re-en. Sec. 9411, R.C.M. 1935; R.C.M. 1947, 93-5709.

Cross-References

Contents of docket in Justices' Courts, 3-10-501.

3-5-509. Docket to be available for inspection. The docket kept by the clerk is open at all times during office hours for the inspection of the public, without charge. The clerk must arrange the several dockets kept by him in such a manner as to facilitate their inspection.

History: En. Sec. 206, p. 174, L. 1867; re-en. Sec. 246, p. 78, Cod. Stat. 1871; re-en. Sec. 297, p. 116, L. 1877; re-en. Sec. 297, 1st Div. Rev. Stat. 1879; re-en. Sec. 309, 1st Div. Comp. Stat. 1887; re-en. Sec. 1199, C. Civ. Proc. 1895; re-en. Sec. 6809, Rev. C. 1907; re-en. Sec. 9412, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 673; re-en. Sec. 9412, R.C.M. 1935; R.C.M. 1947, 93-5711.

3-5-510. Duties relating to jurors and witnesses. The clerk of the district court shall:

(1) keep a book called "Book of Jurors' Warrants", which must contain the blank warrants and copies as provided in 3-15-204;

(2) keep a "Witness Book", which must contain blank warrants and copies as provided in 3-5-511;

(3) keep a record of the attendance of all jurors and witnesses in criminal actions and compute the amount due them for mileage (the distance from any point to the county seat must be determined by the shortest traveled route).

History: Ap. p. Sec. 4440, Pol. C. 1895; re-en. Sec. 3048, Rev. C. 1907; re-en. Sec. 4815, R.C.M. 1921; Cal. Pol. C. Sec. 4204; re-en. Sec. 4815, R.C.M. 1935; amd. Sec. 10, Ch. 344, L. 1977; Sec. 16-3001, R.C.M. 1947; Ap. p. Sec. 4645, Pol. C. 1895; re-en. Sec. 3179, Rev. C. 1907; re-en. Sec. 4937, R.C.M. 1921; re-en. Sec. 4937, R.C.M. 1935; Sec. 25-405, R.C.M. 1947; Ap. p. Sec. 4651, Pol. C. 1895; re-en. Sec. 3185, Rev. C. 1907; re-en. Sec. 4940, R.C.M. 1921; re-en. Sec. 4940, R.C.M. 1935; Sec. 25-408, R.C.M. 1947; R.C.M. 1947, 16-3001(part), 25-405(part), 25-408; amd. Sec. 1, Ch. 379, L. 1983.

Cross-References

Mileage allowance, 2-18-503, 2-18-504, 3-15-201.

Issuance of subpoena, Rule 45(a), M.R.Civ.P. (see Title 25, ch. 20).

Witness fees, Title 26, ch. 2, part 5.

Recognizance by or deposition of witness, 46-11-601.

Subpoenas and witnesses, Title 46, ch. 15, part 1.

3-5-511. Procedure in reference to witnesses' warrants. (1) The witnesses in criminal actions must report their presence to the clerk the first day they attend under the subpoena.

(2) At the time any witness is excused from further attendance, the clerk must give to the witness a warrant taken from a book containing a carbon copy of the same, signed by the clerk, in which must be stated the name of the witness, the number of days in attendance, the number of miles traveled, and the amount due.

(3) On presentation of such warrant to the county treasurer, the amount specified in the warrant must be paid out of the general fund unless the county has a district court fund. If the county has a district court fund, the amount must be paid out of such fund.

History: En. Sec. 4649, Pol. C. 1895; re-en. Sec. 3183, Rev. C. 1907; re-en. Sec. 4938, R.C.M. 1921; re-en. Sec. 4938, R.C.M. 1935; R.C.M. 1947, 25-406; amd. Sec. 2, Ch. 379, L. 1983; amd. Sec. 1, Ch. 66, L. 1985.

Cross-References

Travel expenses, 2-18-503, 2-18-504.

Witness fees, Title 26, ch. 2, part 5.

Criminal proceedings, 46-11-601; Title 46, ch. 15, part 1.

3-5-512. Statement to board of county commissioners concerning witnesses. The clerk must make a detailed statement containing a list of the witnesses and the amount of fees and mileage earned by each and file the same with the clerk of the board of county commissioners on the first day of every regular meeting of the board. No quarterly salary must be paid to the clerk until such statement is filed. The board must examine the statement and see that it is correct.

History: En. Sec. 4650, Pol. C. 1895; re-en. Sec. 3184, Rev. C. 1907; re-en. Sec. 4939, R.C.M. 1921; re-en. Sec. 4939, R.C.M. 1935; R.C.M. 1947, 25-407.

Cross-References

Duties of Clerk as to jurors, 3-15-204.

3-5-513. Probate records. The clerk of the district court shall:

(1) keep a book called “Record of Probate Proceedings”, which must contain all the orders and proceedings of the district court sitting in probate matters and must be indexed in the names of the deceased person or ward;

(2) keep a book called “Register of Probate and Guardianship Proceedings”, in which must be entered the name of the estate and the register number with a memorandum of every paper filed and order or proceeding had therein, with the date thereof, and a memorandum of the fees charged.

History: En. Sec. 4440, Pol. C. 1895; re-en. Sec. 3048, Rev. C. 1907; re-en. Sec. 4815, R.C.M. 1921; Cal. Pol. C. Sec. 4204; re-en. Sec. 4815, R.C.M. 1935; amd. Sec. 10, Ch. 344, L. 1977; R.C.M. 1947, 16-3001(part); amd. Sec. 4, Ch. 104, L. 1981.

3-5-514. Naturalization records. The clerk of the district court shall keep two books:

(1) The first book must be labeled “Declarations of Intention to Become a Citizen of the United States” and must have entered in it, in alphabetical order, the name of each person who from the organization of the court has declared his intention to become a citizen of the United States, with the date of such declaration.

(2) The second book must be labeled “Naturalization—Final Papers” and must have entered in it, in alphabetical order, the name of each person who has been admitted as a citizen of the United States by the court of which he is clerk and, in a separate column opposite each name, the country of which the person was formerly a citizen or subject, the date of his admission, and the page

of the minute book or book of record containing the order admitting him as a citizen.

History: En. Sec. 4440, Pol. C. 1895; re-en. Sec. 3048, Rev. C. 1907; re-en. Sec. 4815, R.C.M. 1921; Cal. Pol. C. Sec. 4204; re-en. Sec. 4815, R.C.M. 1935; amd. Sec. 10, Ch. 344, L. 1977; R.C.M. 1947, 16-3001(part); amd. Sec. 19, Ch. 21, L. 1979.

3-5-515. Fees for naturalization. The clerk of the district court shall collect from every person to whom a final certificate of naturalization is issued, at the time the same is issued, all fees authorized by law. All fees must be accounted for and paid to the county treasurer, as provided by 7-4-2511(1), and shall be credited to the general fund of the county.

History: En. Sec. 1, p. 50, L. 1899; re-en. Sec. 3146, Rev. C. 1907; re-en. Sec. 4894, R.C.M. 1921; re-en. Sec. 4894, R.C.M. 1935; amd. Sec. 1, Ch. 73, L. 1967; amd. Sec. 1, Ch. 171, L. 1969; R.C.M. 1947, 25-210.

3-5-516. Repealed. Sec. 315, Ch. 42, L. 1997.

History: En. Sec. 1, Ch. 295, L. 1991.

Part 6

Court Reporters

3-5-601. Appointment — oath. The judge of a district court may appoint a reporter for such court who is an officer of the court and holds his office during the pleasure of the judge appointing him. He must subscribe the constitutional oath of office and file the same with the clerk of the court. In districts where there are two or more judges, each judge may appoint a reporter.

History: Earlier acts were Secs. 1-3, pp. 393, 394, L. 1877; re-en. Secs. 1176-1178, 5th Div. Rev. Stat. 1879; amd. Secs. 1977-1981, 5th Div. Comp. Stat. 1887. This section en. Sec. 370, C. Civ. Proc. 1895; re-en. Sec. 6373, Rev. C. 1907; re-en. Sec. 8928, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 269; re-en. Sec. 8928, R.C.M. 1935; amd. Sec. 1, Ch. 22, L. 1961; R.C.M. 1947, 93-1901.

Cross-References

Oath of judicial officers, Art. III, sec. 3, Mont. Const.

3-5-602. Salary and expenses — apportionment. (1) Each reporter is entitled to receive a base annual salary of not less than $28,000 or more than $35,000 and no other compensation except as provided in 3-5-604, unless the judge decides to solicit bids for the work performed by the reporter, in which case the salary must be for the amount specified in the bid accepted by the judge. The salary must be set by the judge for whom the reporter works. The salary is payable in monthly installments out of the general funds of the counties composing the district for which the reporter is appointed and out of an appropriation made to the supreme court administrator as provided in subsection (2).

(2) The supreme court administrator shall determine the total number of civil and criminal actions commenced in the preceding year in the district court or courts in the judicial district for which a reporter is appointed. The state shall pay its portion of the reporter's salary based on the proportion of the total number of criminal actions commenced in the district court or courts in the district and the amount appropriated for that purpose. Each county shall pay its portion of the remainder of the salary based on its proportion of the total number of civil and criminal actions commenced in the district courts in the

district. The judge or judges of the district shall, on January 1 of each year or as soon thereafter as possible, apportion the amount of the salary to be paid by each county in the district on the basis prescribed in this subsection. The portion of the salary payable by a county is a district court expense within the meaning of 7-6-2351, 7-6-2352, and 7-6-2511.

(3) In judicial districts comprising more than one county, the reporter is allowed, in addition to the salary and fees provided for in subsection (1), actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, when on official business to a county of the reporter's judicial district other than the county in which the reporter resides. The expenses must be apportioned and are payable in the same way as the salary.

History: En. Sec. 375, C. Civ. Proc. 1895; re-en. Sec. 6378, Rev. C. 1907; amd. Sec. 1, Ch. 80, L. 1909; re-en. Sec. 8933, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 271 and 274; amd. Sec. 1, Ch. 36, L. 1927; re-en. Sec. 8933, R.C.M. 1935; amd. Sec. 1, Ch. 73, L. 1945; amd. Sec. 1, Ch. 49, L. 1951; amd. Sec. 1, Ch. 125, L. 1953; amd. Sec. 1, Ch. 76, L. 1955; amd. Sec. 6, Ch. 22, L. 1961; amd. Sec. 1, Ch. 114, L. 1965; amd. Sec. 1, Ch. 221, L. 1967; amd. Sec. 1, Ch. 192, L. 1969; amd. Sec. 1, Ch. 183, L. 1973; amd. Sec. 1, Ch. 373, L. 1975; amd. Sec. 45, Ch. 344, L. 1977; R.C.M. 1947, 93-1906; amd. Sec. 7, Ch. 528, L. 1979; amd. Sec. 1, Ch. 647, L. 1979; amd. Sec. 1, Ch. 316, L. 1981; amd. Sec. 1, Ch. 156, L. 1983; amd. Sec. 4, Ch. 680, L. 1985; amd. Sec. 6, Ch. 1, Sp. L. 1985; amd. Secs. 1, 2, Ch. 640, L. 1989; amd. Sec. 7, Ch. 10, L. 1993; amd. Sec. 1, Ch. 384, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 384 in (1), near middle of first sentence, increased minimum salary from $23,000 to $28,000 and increased maximum salary from $30,000 to $35,000 and at end inserted "unless the judge decides to solicit bids for the work performed by the reporter, in which case the salary must be for the amount specified in the bid accepted by the judge"; and made minor changes in style.

Cross-References

Fee for court reporter, 25-1-202.

3-5-603. Duties. Each reporter must, under the direction of the judge, attend all sittings of the court and take full stenographic notes of the testimony and of all proceedings given or had thereat except when the judge dispenses with the reporter's services in a particular cause or with respect to a portion of the proceedings therein. The reporter must file with the clerk forthwith the original stenographic notes taken upon a trial or hearing required to be taken by this subsection. The county in which the proceedings are held shall provide a safe and secure place for the clerk to store all official notes of the proceedings. The official notes must be kept for a period of 10 years.

History: Ap. p. Sec. 371, C. Civ. Proc. 1895; re-en. Sec. 6374, Rev. C. 1907; re-en. Sec. 8929, R.C.M. 1921; re-en. Sec. 8929, R.C.M. 1935; amd. Sec. 2, Ch. 22, L. 1961; Sec. 93-1902, R.C.M. 1947; Ap. p. Sec. 372, C. Civ. Proc. 1895; re-en. Sec. 6375, Rev. C. 1907; re-en. Sec. 8930, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 269; re-en. Sec. 8930, R.C.M. 1935; amd. Sec. 3, Ch. 22, L. 1961; amd. Sec. 43, Ch. 344, L. 1977; Sec. 93-1903, R.C.M. 1947; R.C.M. 1947, 93-1902, 93-1903; amd. Sec. 2, Ch. 156, L. 1983.

3-5-604. Transcript of proceedings. (1) Each reporter must furnish, upon request, with all reasonable diligence, to a party or his attorney in a case in which he has attended the trial or hearing a transcript from his stenographic notes of the testimony and proceedings of the trial or hearing or a part thereof, upon payment by the person requiring the same of $2 per page for the original transcript, 50 cents per page for the first copy, 25 cents per page for each additional copy.

(2) If the county attorney, attorney general, or judge requires a transcript in a criminal case, the reporter is entitled to his fees therefor, but he must

furnish it. Upon furnishing it, he shall receive a certificate for the sum to which he is entitled. The reporter shall submit the certificate to the supreme court administrator who, in accordance with 3-5-902, is responsible for the prompt payment of all or a portion of the amount due the reporter. If the state, in accordance with 3-5-902, pays none or only a portion of the amount due, the county shall pay the balance upon receipt of a statement from the reporter.

(3) If the judge requires a copy in a civil case to assist him in rendering a decision, the reporter must furnish the same without charge therefor. In civil cases, all transcripts required by the county shall be furnished, and only the reporter's actual costs of preparation may be paid by the county.

(4) If it appears to the judge that a defendant in a criminal case is unable to pay for a transcript, it shall be furnished to him and paid for by the state in the manner provided in subsection (2) to the extent funds are available. The county shall pay the remainder as required in 3-5-901.

History: En. Sec. 373, C. Civ. Proc. 1895; re-en. Sec. 6376, Rev. C. 1907; re-en. Sec. 8931, R.C.M. 1921; re-en. Sec. 8931, R.C.M. 1935; amd. Sec. 4, Ch. 22, L. 1961; amd. Sec. 1, Ch. 163, L. 1963; amd. Sec. 44, Ch. 344, L. 1977; R.C.M. 1947, 93-1904; amd. Sec. 1, Ch. 295, L. 1981; amd. Sec. 3, Ch. 156, L. 1983; amd. Sec. 5, Ch. 680, L. 1985; amd. Sec. 7, Ch. 1, Sp. L. 1985; amd. Sec. 2, Ch. 704, L. 1991.

Cross-References

Reporter fee in military courts, 10-1-406.

Fee for court reporter, 25-1-202.

Recoverable costs, 25-10-201.

3-5-605 through 3-5-610 reserved.

3-5-611. Reporter pro tempore. (1) The reporter of any district court must attend to the duties of his office in person except when excused for good and sufficient reason by order of the court, which order must be entered upon the minutes of the court. Employment in his professional capacity elsewhere is not a good and sufficient reason for such excuse.

(2) When the reporter of any court has been excused in the manner provided in this section, the court may appoint a reporter pro tempore, who must take the same oath and perform the same duties and receive the same compensation during the time of his employment as the regular reporter.

History: En. Sec. 376, C. Civ. Proc. 1895; re-en. Sec. 6379, Rev. C. 1907; re-en. Sec. 8934, R.C.M. 1921; re-en. Sec. 8934, R.C.M. 1935; amd. Sec. 7, Ch. 22, L. 1961; R.C.M. 1947, 93-1907.

3-5-612. Reporter's report prima facie evidence. The report of the reporter or reporter pro tempore of any court, duly appointed and sworn, when written out in longhand or printed in type and certified as being a correct transcript of the testimony and proceedings in the case, is prima facie a correct statement of such testimony and proceedings.

History: En. Sec. 377, C. Civ. Proc. 1895; re-en. Sec. 6380, Rev. C. 1907; re-en. Sec. 8935, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 273; re-en. Sec. 8935, R.C.M. 1935; amd. Sec. 8, Ch. 22, L. 1961; R.C.M. 1947, 93-1908.

Cross-References

Transcript as evidence, Rule 80, M.R.Civ.P. (see Title 25, ch. 20).

Parts 7 and 8 reserved

Part 9

State Funding for District Courts

3-5-901. State assumption of certain district court expenses — designation as district court criminal reimbursement program. (1) To the extent that revenue is available under 61-3-509, the state shall fund:

(a) the following district court expenses in criminal cases only:

(i) salaries of court reporters;

(ii) fees for transcripts of proceedings;

(iii) witness fees and necessary expenses;

(iv) juror fees;

(v) expenses for indigent defense; and

(vi) expenses for psychiatric examinations;

(b) the district court expenses, as listed in subsection (1)(a), in all postconviction proceedings held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and appeals from those proceedings; and

(c) the following expenses incurred by the state in federal habeas corpus cases that challenge the validity of a conviction or of a sentence:

(i) transcript fees;

(ii) witness fees; and

(iii) expenses for psychiatric examinations.

(2) If revenue received under 61-3-509 exceeds the amount appropriated by the legislature to fund the expenses of the appellate defender program, the excess amount is statutorily appropriated, as provided in 17-7-502, to the supreme court to fund the expenses described in subsections (1)(a) through (1)(c) and the costs of administering this section.

(3) If money appropriated for the expenses listed in subsection (1):

(a) exceeds the amount necessary to fully fund those expenses, up to $500,000 of the excess amount must be used for youth court and probation foster care placements if the department of corrections certifies to the supreme court that appropriations for youth court and probation foster care placements will be inadequate to fund those costs and remaining excess amounts must be used for district court grants as provided in 7-6-2352; or

(b) is insufficient to fully fund those expenses, the county is responsible for payment of the balance.

History: En. Sec. 1, Ch. 680, L. 1985; amd. Sec. 3, Ch. 1, Sp. L. 1985; amd. Sec. 1, Ch. 416, L. 1987; amd. Sec. 3, Ch. 704, L. 1991; amd. Sec. 6, Ch. 781, L. 1991; amd. Sec. 1, Ch. 330, L. 1993; amd. Sec. 2, Ch. 535, L. 1995.

Cross-References

Court reporters — salary and expenses, 3-5-602.

Transcript of proceedings, 3-5-604.

Jurors' fees, 3-15-201.

State grants to District Courts, 7-6-2352.

Enumeration of county court charges, 7-6-2426.

Special provision for certain county charges — criminal prosecutions, 7-6-2427.

Time and method of payment of cost of court-appointed counsel, 46-8-114.

Remuneration of appointed counsel, 46-8-201.

Public defender's office — cost, 46-8-202.

Expenses of grand jury, 46-11-319.

Psychiatric examination of defendant, 46-14-202.

Determination of fitness to proceed to trial — expenses, 46-14-221.

Expenses of witnesses, 46-15-116.

Disposition of money collected as fines and costs, 46-18-235.

Disposition of motor vehicle taxes and fees, 61-3-509.

3-5-902. Fiscal administration for payment of court expenses. The supreme court administrator shall:

(1) establish procedures for disbursement of funds for payment of district court expenses listed in 3-5-901, including prorating of those funds if they are insufficient to cover all expenses listed in 3-5-901; and

(2) require the use of a uniform accounting system in accordance with 2-7-504 by the counties in reporting court expenses at a detailed level for budgeting and auditing purposes.

History: En. Sec. 2, Ch. 680, L. 1985; amd. Sec. 4, Ch. 1, Sp. L. 1985; amd. Sec. 19, Ch. 489, L. 1991; amd. Sec. 4, Ch. 704, L. 1991.

3-5-903. Reimbursement for juror and witness fees. According to procedures required by the supreme court administrator under 3-5-902(1), each clerk of district court shall submit to the administrator a detailed statement containing a list of witnesses and jurors for criminal cases only and the amount of per diem and mileage paid to each by the county. Upon receipt and verification of the statement, the administrator shall promptly reimburse the designated county for the cost of witness and juror fees on a full or prorated basis in accordance with 3-5-902. The county shall deposit the amount reimbursed in its general fund unless the county has a district court fund. If the county has a district court fund, the amount reimbursed must be deposited in such fund.

History: En. Sec. 3, Ch. 680, L. 1985; amd. Sec. 5, Ch. 1, Sp. L. 1985; amd. Sec. 5, Ch. 704, L. 1991.

Cross-References

Jurors' fees, 3-15-201.
Expenses of grand jury, 46-11-319.
Expenses of witnesses, 46-15-116.

3-5-904. *(Temporary)* **Account established for court information technology.** (1) There is an account in the state special revenue fund for state funding of court information technology.

(2) Money collected pursuant to 3-1-317 must be deposited in this account. *(Terminates June 30, 1999—sec. 4, Ch. 361, L. 1995.)*

History: En. Sec. 2, Ch. 361, L. 1995.

CHAPTER 6

MUNICIPAL COURTS

Part 1 — General Provisions

3-6-101. Establishment of court.
3-6-102. Abolition of city court.
3-6-103. Jurisdiction.
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3-6-105. Courtroom and supplies.
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3-6-110. Appeal to district court — record on appeal.

Part 2 — Municipal Court Judges

3-6-201. Number of judges — election — term of office.
3-6-202. Qualifications — certification — training.

3-6-203. Salary.
3-6-204. Disqualification — judge pro tempore.

Part 3 — Conduct of Court Business

3-6-301. Clerk of the court — administrative expenses.
3-6-302. Records — electronic filing and storage.
3-6-303. Officers of the court.

Part 1
General Provisions

3-6-101. Establishment of court. (1) A city with a population of 4,000 or more, according to the last federal census, may have a court, known as the municipal court of the city of (designating the name of the city) of the state of Montana. The court must be a court of record. The municipal court shall assume continuing jurisdiction over all pending city court cases in the city in which the municipal court is established.

(2) A city may have a municipal court only if the governing body of the city elects by a two-thirds majority vote to adopt the provisions of this chapter by ordinance and, in the ordinance, provides the manner in which and time when the municipal court is to be established and is to assume continuing jurisdiction over all pending city court cases. If a city judge is not an attorney and his office is abolished because a municipal court is established, the ordinance must provide that the time when the establishment of the municipal court takes effect is the date on which the municipal court judge elected at the next election held under 3-6-201 begins his term of office. The ordinance must be consistent with the provisions of this chapter.

History: En. Sec. 1, Ch. 177, L. 1935; re-en. Sec. 5094.1, R.C.M. 1935; amd. Sec. 1, Ch. 429, L. 1977; R.C.M. 1947, 11-1701; amd. Sec. 1, Ch. 99, L. 1991.

Cross-References

Courts of record, 3-1-102.

3-6-102. Abolition of city court. (1) In cities in which a municipal court is established, the office of city judge is abolished.

(2) Except as provided in 3-6-101(2), a city judge whose office is abolished shall serve as a municipal court judge in the same city in which he served as city judge for the remainder of his term and until the office of municipal court udge is filled by election, as provided under 3-6-201 and 3-6-202.

History: En. Sec. 16, Ch. 177, L. 1935; re-en. Sec. 5094.16, R.C.M. 1935; R.C.M. 1947, 11-1716; amd. Sec. 2, Ch. 99, L. 1991.

3-6-103. Jurisdiction. (1) The municipal court has jurisdiction coordinate and coextensive with the justices' courts of the county where the city is located and has exclusive original jurisdiction of all civil and criminal actions and proceedings provided for in 3-11-103.

(2) Municipal courts have concurrent jurisdiction with the district court n actions arising under Title 70, chapters 24 through 27.

(3) Applications for search warrants and complaints charging the commission of a felony may be filed in municipal court. The municipal court udge has the same jurisdiction and responsibility as a justice of the peace,

including holding preliminary hearings. The city attorney may initiate proceedings charging a felony if the offense was committed within the city limits, but the county attorney shall take charge of the action if an information is filed in district court.

History: En. Sec. 2, Ch. 177, L. 1935; re-en. Sec. 5094.2, R.C.M. 1935; R.C.M. 1947, 11-1702; amd. Sec. 1, Ch. 330, L. 1991.

Cross-References

Jurisdiction of forcible entry and unlawful detainer, 3-10-302, 70-27-101.

Youth Court — concurrent jurisdiction over alcoholic beverage, tobacco products, and gambling violations, 41-5-203.

Criminal jurisdiction, 46-2-204.

3-6-104. Powers and duties of the court. (1) Except as otherwise provided by this chapter, chapter 30 of Title 25, and part 4 of chapter 17 of Title 46, the municipal court shall have in matters within its jurisdiction all the powers and duties of district judges in like cases. The court may make and alter rules for the conduct of its business and prescribe forms of process conformable to law.

(2) The municipal court shall establish rules for appeal to district court. The rules are subject to the supreme court's rulemaking and supervisory authority.

History: (1)En. Sec. 20, Ch. 177, L. 1935; re-en. Sec. 5094.19, R.C.M. 1935; Sec. 11-1719, R.C.M. 1947; (2)En. Sec. 17, Ch. 177, L. 1935; re-en. Sec. 5094.17, R.C.M. 1935; amd. Sec. 9, Ch. 429, L. 1977; Sec. 11-1717, R.C.M. 1947; R.C.M. 1947, 11-1717(3), 11-1719(part).

Cross-References

Procedure in Municipal Courts, Title 25, ch. 30.

Applicability of District Court and Justice's Court rules, 25-30-101.

3-6-105. Courtroom and supplies. A room for the municipal court, with necessary furniture, fixtures, and supplies, shall be provided by the city wherein the court is located.

History: En. Sec. 5, Ch. 177, L. 1935; re-en. Sec. 5094.5, R.C.M. 1935; amd. Sec. 5, Ch. 429, L. 1977; R.C.M. 1947, 11-1705.

3-6-106. Sessions of the court. The municipal court shall be in continuous session from 9 a.m. to noon and from 1 p.m. to 4 p.m. on every day except nonjudicial days. The judge may designate additional hours as he, in his discretion, sees fit.

History: En. Sec. 8, Ch. 177, L. 1935; re-en. Sec. 5094.8, R.C.M. 1935; amd. Sec. 6, Ch. 429, L. 1977; R.C.M. 1947, 11-1708.

Cross-References

Nonjudicial days for certain purposes, 3-1-302.

3-6-107 through 3-6-109 reserved.

3-6-110. Appeal to district court — record on appeal. (1) A party may appeal to district court from a municipal court judgment or order. The appeal is confined to review of the record and questions of law, subject to the supreme court's rulemaking and supervisory authority.

(2) The record on appeal to district court consists of an electronic recording or stenographic transcription of a case tried, together with all papers filed in the action.

(3) The district court may affirm, reverse, or amend any appealed order or judgment and may direct the proper order or judgment to be entered or direct

that a new trial or further proceeding be had in the court from which the appeal was taken.

History: **En. Sec. 6, Ch. 99, L. 1991.**

Part 2
Municipal Court Judges

Part Cross-References

Courts of limited jurisdiction — training and certification of judges, Title 3, ch. 1, part 15.

3-6-201. Number of judges — election — term of office. (1) The governing body of a city shall determine by ordinance the number of judges required to operate the municipal court.

(2) A municipal court judge must be elected at the general election, as provided in 13-1-104(2). The judge's term commences on the first Monday in January following the election. The judge shall hold office for the term of 4 years and until his successor is elected and qualified.

(3) Except as provided in subsection (2), all elections of municipal court judges are governed by the laws applicable to the election of district court judges.

History: **En. Sec. 3, Ch. 177, L. 1935; re-en. Sec. 5094.3, R.C.M. 1935; amd. Sec. 2, Ch. 429, L. 1977; R.C.M. 1947, 11-1703; amd. Sec. 376, Ch. 571, L. 1979; amd. Sec. 3, Ch. 99, L. 1991.**

Cross-References

Election of Justice of the Peace, 3-10-201.

Application of general election laws to nonpartisan office, 13-14-111.

3-6-202. Qualifications — certification — training. (1) A municipal court judge must have the same qualifications as a judge of a district court, as set forth in Article VII, section 9, of the 1972 Montana constitution, except that a municipal court judge need only be admitted to the practice of law in Montana for at least 2 years prior to the date of appointment or election.

(2) A municipal court judge must be a resident and voter in the city in which he is elected at the time of his election.

(3) A municipal court judge must be certified as provided in 3-1-1502 or 3-1-1503 prior to assuming office.

(4) There must be two mandatory annual training sessions supervised by the supreme court for all elected and appointed municipal court judges. One of the training sessions may be held in conjunction with the Montana magistrates' association convention. Actual and necessary travel expenses, as defined and provided for in 2-18-501 through 2-18-503, and the costs of registration and books and other materials must be paid to the elected or appointed municipal court judge for attending the sessions by the city in which he holds or will hold court and must be charged against that city.

(5) Each municipal court judge shall attend the training sessions provided for in subsection (4). Failure to attend disqualifies a judge from office and creates a vacancy in the office. However, the supreme court may excuse a municipal court judge from attendance because of illness, a death in the family, or any other good cause.

History: **En. Sec. 4, Ch. 177, L. 1935; re-en. Sec. 5094.4, R.C.M. 1935; amd. Sec. 1, Ch. 124, L. 1974; amd. Sec. 3, Ch. 429, L. 1977; R.C.M. 1947, 11-1704(1); amd. Sec. 3, Ch. 317, L. 1991.**

3-6-203. Salary. The salary of the municipal court judge must be set by ordinance or resolution and is payable monthly by the city treasurer. Actual and necessary expenses for the municipal court judge are expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of his official duties.

History: **En. Sec. 4, Ch. 177, L. 1935; re-en. Sec. 5094.4, R.C.M. 1935; amd. Sec. 1, Ch. 124, L. 1974; amd. Sec. 3, Ch. 429, L. 1977; R.C.M. 1947, 11-1704(2); amd. Sec. 8, Ch. 528, L. 1979; amd. Sec. 4, Ch. 99, L. 1991.**

3-6-204. Disqualification — judge pro tempore. When a judge of a municipal court has been disqualified or is sick or unable to act, he shall call in some practicing attorney of the county in which his court is located, who shall be judge pro tempore with the same powers for the purposes of the cause as the judge of the court.

History: **En. Sec. 13, Ch. 177, L. 1935; re-en. Sec. 5094.13, R.C.M. 1935; R.C.M. 1947, 11-1713; amd. Sec. 20, Ch. 21, L. 1979.**

Cross-References

Disqualification and substitution of judges, Title 3, ch. 1, part 8.

Judges pro tempore — special masters — scope of authority in criminal and civil cases, 3-5-113.

Part 3
Conduct of Court Business

3-6-301. Clerk of the court — administrative expenses. The position of municipal court clerk of the court must be established by ordinance. The governing body of the city shall set the salary of the clerk and provide for other necessary expenses that may be incurred in operating the court.

History: **En. Sec. 6, Ch. 177, L. 1935; re-en. Sec. 5094.6, R.C.M. 1935; R.C.M. 1947, 11-1706(part); amd. Sec. 5, Ch. 99, L. 1991.**

3-6-302. Records — electronic filing and storage. (1) The records of the court must be kept by the clerk. The records in civil causes must conform as nearly as possible to the records of district courts. In criminal causes, in cases arising under city ordinances, and in cases mentioned in 3-11-103, the records must be similar to the records now kept in justices' courts.

(2) The clerk may elect to keep court documents by means of electronic filing or storage, or both, as provided in 3-1-114 and 3-1-115, in lieu of or in addition to keeping paper records.

History: **En. Sec. 6, Ch. 177, L. 1935; re-en. Sec. 5094.6, R.C.M. 1935; R.C.M. 1947, 11-1706(part); amd. Sec. 21, Ch. 21, L. 1979; amd. Sec. 5, Ch. 174, L. 1995.**

Cross-References

Clerk to keep seal, 3-1-204.

3-6-303. Officers of the court. (1) The chief of police of the city shall be the executive officer of such court. He shall serve all process and execute all orders of the court, either in person or by subordinate police officer, who shall execute process in his name.

(2) The chief of police, with the approval of the judge, shall appoint one or more policemen as court officers, one of whom shall attend the sessions of the

court and perform all duties in connection therewith which the judge may require.

History: En. Sec. 7, Ch. 177, L. 1935; re-en. Sec. 5094.7, R.C.M. 1935; R.C.M. 1947, 11-1707.

Cross-References

Applicability of District Court and Justice's Court rules, 25-30-101.

Police officer to perform duties prescribed to Sheriff, 25-30-105.

CHAPTER 7

WATER COURTS

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Part 1

Water Divisions

3-7-101. Water divisions. To adjudicate existing water rights and to conduct hearings in cases certified under 85-2-309, water divisions are established as defined in 3-7-102. A water division shall be presided over by a water judge.

History: En. Sec. 1, Ch. 697, L. 1979; amd. Sec. 1, Ch. 596, L. 1985.

Cross-References

Constitutional rights to water, Art. IX, sec. 3, Mont. Const.

Adjudication of water rights, Title 85, ch. 2, part 2.

3-7-102. Water divisions boundaries. There are four water divisions whose boundaries are formed by the natural divides between drainages and the borders of the state of Montana and which are described as follows:

(1) The Yellowstone River basin water division consists of those areas drained by the Yellowstone and Little Missouri Rivers and any remaining areas in Carter County.

(2) The lower Missouri River basin water division consists of those areas drained by the Missouri River from below the mouth of the Marias River and any remaining areas in Glacier and Sheridan Counties.

(3) The upper Missouri River basin water division consists of those areas drained by the Missouri River to below the mouth of the Marias River.

(4) The Clark Fork River basin water division consists of the areas drained by the Clark Fork River, the Kootenai River, and any remaining areas in Lincoln County.

History: En. Sec. 2, Ch. 697, L. 1979.

Cross-References

Jurisdiction confined to boundaries, 3-7-501.

Water division as drainage basin, 85-2-102.

3-7-103. Promulgation of rules and prescription of forms — advisory committee. (1) As soon as practicable the Montana supreme court may promulgate special rules of practice and procedure and shall prescribe forms for use in connection with this chapter and Title 85, chapter 2, parts 2 and 7, in consultation with the water judge and the department of natural resources and conservation.

(2) (a) The chief water judge shall appoint a water adjudication advisory committee to provide recommendations to the water court, the Montana supreme court, the department of natural resources and conservation, and the legislature on methods to improve and expedite the water adjudication process.

(b) The committee consists of three nongovernmental attorneys who practice before the water court, one district court judge, and three water users who have filed statements of claim with the department of natural resources and conservation under this chapter.

(c) The chief water judge or the judge's designee shall serve as an ex officio member of the committee. The Montana supreme court may appoint the attorney general or the attorney general's designee, a representative from the department of natural resources and conservation, and a representative of the United States government as ex officio members of the committee.

(d) The committee members shall serve at the pleasure of the water court and shall serve without compensation.

(e) The committee shall file a report with the Montana supreme court by October 1, 1996, and as often as determined by the Montana supreme court.

History: En. Sec. 10, Ch. 697, L. 1979; amd. Sec. 16, Ch. 575, L. 1981; amd. Sec. 1, Ch. 421, L. 1995.

Cross-References

Disqualification of Water Judge or master, 3-7-402.

Water Court Rules, see annotations volume compiler's comments under 85-2-231.

Part 2
Water Judges

3-7-201. Designation of water judge. (1) A water judge shall be designated within 30 days after May 11, 1979, for each water division by a majority vote of a committee composed of the district judge from each single judge judicial district and the chief district judge from each multiple judge judicial district, wholly or partly within the division. Except as provided in subsection (2), a water judge must be a district judge or retired district judge of a judicial district wholly or partly within the water division.

(2) A district judge or retired district judge may sit as a water judge in more than one division if requested by the chief justice of the supreme court or the water judge of the division in which he is requested to sit.

(3) A water judge, when presiding over a water division, presides as district judge in and for each judicial district wholly or partly within the water division.

History: En. Sec. 1, Ch. 697, L. 1979; amd. Sec. 1, Ch. 80, L. 1981; amd. Sec. 1, Ch. 604, L. 1989.

3-7-202. Term of office. The term of office for water judges is from the date of initial appointment as provided in 3-7-201 to June 30, 1985. After June 30, 1985, the term of office of a water judge is 4 years, subject to continuation of the water divisions by the legislature.

History: En. Sec. 9, Ch. 697, L. 1979.

3-7-203. Vacancies. If a vacancy occurs, it shall be filled in the manner provided in 3-7-201 for the initial designation of a water judge. A vacancy is created when a water judge dies, resigns, retires, is not elected to a subsequent term, forfeits his judicial position, is removed, or is otherwise unable to complete his term as a water judge.

History: En. Sec. 8, Ch. 697, L. 1979; amd. Sec. 2, Ch. 80, L. 1981.

3-7-204. Supervision and administration by supreme court. (1) The Montana supreme court shall supervise the activities of the water judges, water masters, and associated personnel in implementing this chapter and Title 85, chapter 2, part 2.

(2) The supreme court shall pay the expenses of the water judges and the salaries and expenses of the water judges' staffs and the salaries and expenses of the water masters and the water masters' staffs, from the water right adjudication account established by 85-2-241. "Salaries and expenses" as used in this section include but are not limited to the salaries and expenses of personnel, the cost of office equipment and office space, and such other necessary expenses as may be incurred in the administration of this chapter and Title 85, chapter 2, part 2.

History: En. Sec. 1, Ch. 268, L. 1981.

Cross-References

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

3-7-205 through 3-7-210 reserved.

3-7-211. Appointment of water commissioners. The district court having jurisdiction over the hydrologically interrelated portion of a water division, as described in 85-2-231(3), in which the controversy arises may appoint and supervise a water commissioner as provided for in Title 85, chapter 5.

History: En. Sec. 6, Ch. 697, L. 1979; amd. Sec. 2, Ch. 604, L. 1989; amd. Sec. 2, Ch. 16, L. 1991.

Cross-References

Water Commissioners, Title 85, ch. 5.

3-7-212. Enforcement of decrees. The district court having jurisdiction may enforce the provisions of a final decree. In the absence of any final decree having been issued, the district court having jurisdiction may enforce the provisions of a temporary preliminary decree or preliminary decree entered under 85-2-231, as modified by a water judge after objections and hearings.

History: En. Sec. 6, Ch. 697, L. 1979; amd. Sec. 3, Ch. 604, L. 1989.

3-7-213. Repealed. Sec. 8, Ch. 604, L. 1989.

History: En. Sec. 6, Ch. 697, L. 1979; amd. Sec. 3, Ch. 80, L. 1981; amd. Sec. 6, Ch. 651, L. 1987.

3-7-214 through 3-7-220 reserved.

3-7-221. Appointment of chief water judge — term of office. (1) The chief justice of the Montana supreme court shall appoint a chief water judge as provided in Title 3, chapter 1, part 10.

(2) To be eligible for the office of chief water judge, a person shall have the qualifications for district court or supreme court judges found in Article VII, section 9, of the Montana constitution.

(3) The term of office of the chief water judge is from the date of initial appointment until June 30, 1985. After June 30, 1985, the term of office is 4 years, subject to continuation of the water divisions by the legislature.

History: En. Sec. 1, Ch. 442, L. 1981; amd. Sec. 7, Ch. 651, L. 1987.

Cross-References

Montana judges' retirement system, Title 19, ch. 5.

3-7-222. Salary — office space. (1) The chief water judge is entitled to receive the same salary and expense allowance as provided for district judges in 3-5-211.

(2) The office of the chief water judge shall be at the location that the chief justice of the Montana supreme court shall designate. The Montana supreme court shall provide in its budget for the salary, expenses, and office and staff requirements of the chief water judge, which money may be appropriated by the legislature from the water right adjudication account.

History: En. Sec. 2, Ch. 442, L. 1981.

Cross-References

Judges' retirement system — Chief Water Judge as member, 19-5-301.

3-7-223. Duties of the chief water judge. The chief water judge shall:

(1) administer the adjudication of existing water rights by:

(a) coordinating with the department of natural resources and conservation in compiling information submitted on water claim forms under Title 85, chapter 2, part 2, to assure that the information is expeditiously and properly compiled and transferred to the water judge in each water division;

(b) assuring that the water judge in each water division moves without unreasonable delay to enter the required preliminary decree;

(c) assuring that any contested or conflicting claims are tried and adjudicated as expeditiously as possible;

(2) conduct hearings in cases certified to the district court under 85-2-309;

(3) assign court personnel to divisions and duties as needed; and

(4) request and secure the transfer of water judges between divisions as needed.

History: En. Sec. 3, Ch. 442, L. 1981; amd. Sec. 1, Ch. 256, L. 1983; amd. Sec. 2, Ch. 596, L. 1985.

Cross-References

Priority basins and subbasins, 85-2-218.

3-7-224. Jurisdiction of chief water judge. (1) The chief water judge may, at the discretion of the chief justice of the Montana supreme court, also serve as water judge for one of the water divisions.

(2) The chief water judge has jurisdiction over cases certified to the district court under 85-2-309 and all matters relating to the determination of existing water rights within the boundaries of the state of Montana.

(3) With regard to the consideration of a matter within his jurisdiction, the chief water judge has the same powers as a district judge. He may issue such orders, on the motion of an interested party or on his own motion, as may reasonably be required to allow him to fulfill his responsibilities including, but not limited to, requiring the joinder of persons not parties to the administrative hearing being conducted by the department pursuant to 85-2-309 or 85-2-402 as deemed necessary to resolve any factual or legal issue certified pursuant to 85-2-309(2).

History: En. Sec. 4, Ch. 442, L. 1981; amd. Sec. 3, Ch. 596, L. 1985.

Part 3

Water Masters

3-7-301. Appointment of water masters — removal. (1) The chief water judge or the water judge in each water division may appoint one or more water masters.

(2) A water master may be appointed after July 1, 1980, and must be appointed on or before July 1, 1982.

(3) In appointing a water master, the water judge shall consider a potential master's experience with water law, water use, and water rights.

(4) A water master shall serve at the pleasure of the chief water judge and may be removed by the chief water judge.

(5) A water master may serve in any water division and may be moved among the water divisions at the discretion of the chief water judge.

History: En. Sec. 3, Ch. 697, L. 1979; amd. Sec. 2, Ch. 268, L. 1981; amd. Sec. 2, Ch. 256, L. 1983.

3-7-302. Salary, expenses, and retirement of water masters. (1) The water judges shall set a uniform salary for water masters. Water masters shall receive expenses as provided in 2-18-501 through 2-18-503.

(2) A water master shall participate in the Montana Public Employees' Retirement System established in Title 19, chapter 3.

(3) The salary and expenses of a water master shall be paid from the water right adjudication account established in 85-2-241.

History: En. Sec. 4, Ch. 697, L. 1979.

3-7-303 through 3-7-310 reserved.

3-7-311. Duties of water masters. (1) The water master has the general powers given to a master by Rule 53(c), M.R.Civ.P.

(2) Within a reasonable time after June 30, 1983, the water master shall issue a report to the water judge meeting the requirements for the preliminary decree as specified in 85-2-231.

(3) After a water judge issues a preliminary decree, the water master shall assist the water judge in the performance of the water division's further duties as ordered by the water judge.

History: En. Sec. 5, Ch. 697, L. 1979.

Compiler's Comments

Rule Reference: If the proposed amendment to Rule 53, M.R.Civ.P., is adopted, the reference to Rule 53(c) in this section will become Rule 53(a)(3). See proposed amendment comment to Rule 53 for text of proposed amendment.

Part 4

Disqualification

3-7-401. Definitions. For the purposes of this part, the following definitions apply:

(1) "Fiduciary" includes such relationships as executor, administrator, trustee, or guardian.

(2) "Financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, cr other active participant in the affairs of a party, except that:

(a) ownership in a mutual or common investment fund that holds securities is not a financial interest in such securities unless the judge or water master participates in the management of the fund;

(b) an office in an educational, religious, charitable, fraternal, or civic organization is not a financial interest in securities held by the organization;

(c) the proprietary interest of a policyholder in a mutual insurance company or a depositor in a mutual savings association or a similar proprietary interest is a financial interest in the organization only if the outcome of the proceeding could substantially affect the value of the interest; and

(d) ownership of government securities is a financial interest in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(3) "Proceeding" includes prehearing, hearing, appellate review, or other stages of adjudication conducted by the water master or water judge.

History: En. Sec. 7, Ch. 697, L. 1979.

Cross-References

Fiduciary, 32-1-425.

3-7-402. Disqualification of water judge or master. (1) A water judge may withdraw or may disqualify the water master in any proceeding or pertinent portion of a proceeding in which the judge's or the water master's impartiality might reasonably be questioned.

(2) A water judge may also withdraw or may disqualify the water master in the following circumstances:

(a) if the judge or the water master has a personal bias or prejudice concerning a party of personal knowledge or disputed evidentiary facts concerning the proceeding;

(b) if in private practice the judge or the water master served as a lawyer in the matter in controversy or a lawyer with whom the judge or the water master previously practiced law served during the association as a lawyer concerning the matter or the judge or the lawyer has been a material witness concerning it;

(c) if the judge or the water master has served in governmental employment and in that capacity participated as counsel, adviser, or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(d) if the judge or the water master knows that the judge or the water master, individually or as a fiduciary, or the judge's or the water master's spouse or minor child residing in the judge's or the water master's household has a financial interest in the subject matter in controversy or in a party to the proceeding or any other interest that could be substantially affected by the outcome of the proceeding; or

(e) if the judge or the water master or the judge's or the water master's spouse or a person within the third degree of relationship to any of them (as calculated according to 72-11-101 through 72-11-104) or the spouse of such a person:

(i) is a party to the proceeding or an officer, director, or trustee of a party;

(ii) is known by the judge or water master to have an interest that could be substantially affected by the outcome of the proceeding;

(iii) is to the judge's or water master's knowledge likely to be a material witness in the proceeding.

(3) A water judge should be informed about the judge's and the water master's personal and fiduciary financial interests and make a reasonable effort to be informed about the personal financial interests of the judge's and the water master's spouse and minor children residing in the judge's or the water master's respective household.

History: **En. Sec. 7, Ch. 697, L. 1979; amd. Sec. 1, Ch. 494, L. 1993.**

Cross-References

Disqualification and substitution of judges, Title 3, ch. 1, part 8.

3-7-403. Waiver of disqualification. A water judge may accept from the parties to the proceeding a waiver of any ground for disqualification if it is preceded by a full disclosure on the record of the basis for disqualification.

History: **En. Sec. 7, Ch. 697, L. 1979.**

3-7-404. Procedure exclusive. The procedure for disqualification of a water judge or water master specified in this section is exclusive unless otherwise specifically altered by the Montana supreme court.

History: En. Sec. 7, Ch. 697, L. 1979.

Cross-References

Promulgation of rules, 3-7-103.

Part 5
Jurisdiction

3-7-501. Jurisdiction. (1) The jurisdiction of each judicial district concerning the determination and interpretation of cases certified to the court under 85-2-309 or of existing water rights is exercised exclusively by it through the water division or water divisions that contain the judicial district wholly or partly.

(2) A water judge may not preside over matters concerning the determination and interpretation of cases certified to the court under 85-2-309 or of existing water rights beyond the boundaries specified in 3-7-102 for the judge's division except as provided in 3-7-201.

(3) The water judge for each division shall exercise jurisdiction over all matters concerning cases certified to the court under 85-2-309 or concerning the determination and interpretation of existing water rights within the judge's division as specified in 3-7-102 that are considered filed in or transferred to a judicial district wholly or partly within the division.

(4) The determination and interpretation of existing water rights includes, without limitation, the adjudication of total or partial abandonment of existing water rights occurring at any time before the entry of the final decree.

History: En. Secs. 1, 6, Ch. 697, L. 1979; amd. Sec. 4, Ch. 80, L. 1981; amd. Sec. 4, Ch. 596, L. 1985; amd. Sec. 4, Ch. 604, L. 1989; amd. Sec. 1, Ch. 174, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 174 inserted (4) to include abandonment of existing water rights in the final decree; and made minor changes in style. Amendment effective March 28, 1997.

3-7-502. Jurisdictional disputes. Whenever a question arises concerning which water judge shall preside over adjudication of a matter concerning a case certified to the court under 85-2-309 or the determination and interpretation of existing water rights, the question shall be settled by the water judges involved.

History: En. Sec. 2, Ch. 697, L. 1979; amd. Sec. 5, Ch. 596, L. 1985.

CHAPTERS 8 AND 9

RESERVED

CHAPTER 10

JUSTICES' COURTS

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Part 1
General Provisions

3-10-101. Number and location of justices' courts — authorization to combine with city court. (1) There must be at least one justice's court in each county of the state, which must be located at the county seat.

(2) The board of county commissioners of each county of the state shall have authority to constitute:

(a) as it considers necessary, one additional justice's court which may be located anywhere in the county; and

(b) one additional justice's court located in each city having a population of over 5,000, as provided in subsection (3).

(3) A city having a population of over 5,000 may, by resolution, request the board of county commissioners to constitute a justice's court in the city. A justice's court shall be established in the city if the board of county commissioners approves the request by resolution.

(4) A justice of the peace of a court constituted pursuant to subsection (3) may act as the city judge upon passage of a city ordinance authorizing such action and upon approval of the ordinance by resolution of the board of county commissioners. If such an ordinance and such a resolution are passed, the city and the county shall enter into an agreement for proportionate payment of the justice's salary as established under 3-10-207 and 3-11-202 and for proportionate reimbursement for the use of facilities.

History: En. Sec. 60, C. Civ. Proc. 1895; re-en. Sec. 6279, Rev. C. 1907; re-en. Sec. 8833, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 85; re-en. Sec. 8833, R.C.M. 1935; amd. Sec. 4, Ch. 491, L. 1973; amd. Sec. 1, Ch. 23, L. 1974; amd. Sec. 1, Ch. 276, L. 1974; amd. Sec. 9, Ch. 420, L. 1975; R.C.M. 1947, 93-401(part); amd. Sec. 1, Ch. 56, L. 1981.

Cross-References

Justice of the Peace as City Judge, 3-11-205.

Exception to office location of county officers, 7-4-2211.

Procedure in Justices' Courts, Title 25, ch. 31.

3-10-102. When courts open. A justice's court is always open for the transaction of business, except on legal holidays and nonjudicial days.

History: En. Sec. 61, C. Civ. Proc. 1895; re-en. Sec. 6280, Rev. C. 1907; re-en. Sec. 8834, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 104; amd. Sec. 1, Ch. 92, L. 1933; re-en. Sec. 8834, R.C.M. 1935; amd. Sec. 6, Ch. 491, L. 1973; amd. Sec. 3, Ch. 276, L. 1974; R.C.M. 1947, 93-402.

Cross-References

Nonjudicial days for certain purposes, 3-1-302.

3-10-103. County to provide facilities. The board of county commissioners of the county in which the justice of the peace has been elected or appointed shall provide for the justice of the peace:

(1) the office, courtroom, and clerical assistance necessary to enable him to perform his duties in dignified surroundings;

(2) the books, records, forms, papers, stationery, postage, office equipment, and supplies necessary in the proper keeping of the records and files of the judicial office and the transaction of the business;

(3) the latest edition of the Montana Code Annotated and all official supplements thereto.

History: En. Sec. 3, Ch. 491, L. 1973; R.C.M. 1947, 93-412(1).

ross-References

Veterans' public employment preference, itle 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

3-10-104 through 3-10-110 reserved.

3-10-111. What provisions of code applicable to justices' courts. ecause justices' courts are courts of peculiar and limited jurisdiction, only hose provisions of this code which are, in their nature, applicable to the rganization, powers, and course of proceedings in justices' courts or which ave been made applicable by special provisions in this chapter, chapter 31 of itle 25, and Title 27 are applicable to justices' courts and the proceedings herein.

History: En. Sec. 1686, C. Civ. Proc. 1895; re-en. Sec. 7084, Rev. C. 1907; re-en. Sec. 717, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 925; re-en. Sec. 9717, R.C.M. 1935; amd. Sec. 2, Ch. 344, L. 1977; R.C.M. 1947, 93-7707; amd. Sec. 22, Ch. 21, L. 1979.

ross-References

Provisions applicable to Justices' Courts, 5-31-111.

Part 2
Justices of the Peace

art Cross-References

Justices of the Peace, Art. VII, sec. 5, Mont. onst.

Official bond, 2-9-701 through 2-9-704.

Courts of limited jurisdiction — training and certification of judges, Title 3, ch. 1, part 15.

3-10-201. Election. (1) Each justice of the peace must be elected by the qualified electors of the county at the general state election next preceding the expiration of the term of office of his predecessor.

(2) A justice of the peace shall be nominated and elected on the nonpartisan judicial ballot in the same manner as are judges of the district court.

(3) Each judicial office shall be a separate and independent office for election purposes, and each office shall be numbered by the county commissioners, and each candidate for justice of the peace shall specify the number of the office for which he seeks to be elected. A candidate may not file for more than one office.

(4) Section 13-35-231, prohibiting political party endorsement for judicial officers, shall also apply to justices of the peace.

History: En. Sec. 60, C. Civ. Proc. 1895; re-en. Sec. 6279, Rev. C. 1907; re-en. Sec. 8833, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 85; re-en. Sec. 8833, R.C.M. 1935; amd. Sec. 4, Ch. 491, L. 1973; amd. Sec. 1, Ch. 23, L. 1974; amd. Sec. 1, Ch. 276, L. 1974; amd. Sec. 9, Ch. 420, L. 1975; R.C.M. 1947, 93-401(part).

Cross-References

Successor to office, 3-10-513.

Nonpartisan elections, 13-14-111.

3-10-202. Oath — proof of certification. (1) Each justice of the peace, elected or appointed, after he has received his certificate of election or appointment, shall, before entering upon the duties of his office, take the constitutional oath of office, which must be filed with the county clerk.

(2) Before the county clerk may file the oath, the elected or appointed justice must satisfy the clerk that he is certified as provided in 3-1-1502 or 3-1-1503.

History: En. Sec. 60, C. Civ. Proc. 1895; re-en. Sec. 6279, Rev. C. 1907; re-en. Sec. 8833, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 85; re-en. Sec. 8833, R.C.M. 1935; amd. Sec. 4, Ch. 491, L. 1973; amd. Sec. 1, Ch. 23, L. 1974; amd. Sec. 1, Ch. 276, L. 1974; amd. Sec. 9, Ch. 420, L. 1975; R.C.M. 1947, 93-401(3), (4); amd. Sec. 1, Ch. 366, L. 1987; amd. Sec. 4, Ch. 317, L. 1991.

Cross-References

Oath of judicial officers, Art. III, sec. 3, Mont. Const.

Nonjudicial days for certain purposes, 3-1-302.

3-10-203. Orientation course — annual training. (1) Under the supervision of the supreme court, a course of study must be presented as soon as is practical following each general election. Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other materials shall be paid to the elected or appointed justice of the peace for attending the course by the county in which he holds or will hold court and shall be charged against that county.

(2) There shall be two mandatory annual training sessions supervised by the supreme court for all elected and appointed justices of the peace. One of the training sessions may be held in conjunction with the Montana magistrates' association convention. Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other materials shall be paid to the elected or appointed justice of the peace for attending the sessions by the county in which he holds or will hold court and shall be charged against that county.

(3) Each justice of the peace shall attend the training sessions provided for in subsection (2). Failure to attend disqualifies him from office and creates a vacancy in the office. However, the supreme court may excuse a justice of the peace from attendance because of illness, a death in the family, or any other good cause.

History: En. Sec. 60, C. Civ. Proc. 1895; re-en. Sec. 6279, Rev. C. 1907; re-en. Sec. 8833, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 85; re-en. Sec. 8833, R.C.M. 1935; amd. Sec. 4, Ch. 491, L. 1973; amd. Sec. 1, Ch. 23, L. 1974; amd. Sec. 1, Ch. 276, L. 1974; amd. Sec. 9, Ch. 420, L. 1975; R.C.M. 1947, 93-401(5), (6); amd. Sec. 1, Ch. 466, L. 1979; amd. Sec. 9, Ch. 528, L. 1979; amd. Sec. 2, Ch. 366, L. 1987.

Cross-References

Training and certification of judges, Title 3, ch. 1, part 15.

3-10-204. Residence requirements. (1) Every justice of the peace must reside in the county in which his court is held.

(2) No person is eligible to the office of justice of the peace unless he shall have been a citizen of the United States and a resident of the county in which he is to serve for 1 year next preceding his election or appointment.

History: En. Sec. 163, C. Civ. Proc. 1895; re-en. Sec. 6311, Rev. C. 1907; re-en. Sec. 8865, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 159; re-en. Sec. 8865, R.C.M. 1935; amd. Sec. 13, Ch. 491, L. 1973; R.C.M. 1947, 93-704.

Cross-References

Rules for determining residency, 1-1-215.

3-10-205. Term of office. The term of office of justices of peace is 4 years from the first Monday in January next succeeding their election.

History: En. Sec. 64, C. Civ. Proc. 1895; re-en. Sec. 6283, Rev. C. 1907; re-en. Sec. 8837, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 110; re-en. Sec. 8837, R.C.M. 1935; amd. Sec. 8, Ch. 491, L. 1973; R.C.M. 1947, 93-405.

Cross-References

Terms and salary of Justices of the Peace, Art. VII, sec. 7, Mont. Const.

3-10-206. Vacancies. If a vacancy occurs in the office of a justice of the peace, the county commissioners of the county must appoint an eligible person to hold the office until the next general election and until a successor is elected and qualified.

History: En. Sec. 65, C. Civ. Proc. 1895; re-en. Sec. 6284, Rev. C. 1907; re-en. Sec. 8838, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 111; re-en. Sec. 8838, R.C.M. 1935; R.C.M. 1947, 93-406; amd. Sec. 1, Ch. 175, L. 1985.

Cross-References

Impeachment, Art. V, sec. 13, Mont. Const.

Forfeiture of judicial position, Art. VII, sec. 10, Mont. Const.

Removal by action of Judicial Standards Commission, Art. VII, sec. 11, Mont. Const.

Vacancies created, 2-16-501.

Resignations, 2-16-502.

Vacancy — failure to attend training session, 3-10-203.

Successor to office, 3-10-511 through 3-10-514.

Improper handling of fees, 3-10-602.

Vacancies of county officers, 7-4-2206.

Misconduct in office, 45-7-401.

3-10-207. Salaries. (1) The board of county commissioners shall set salaries for justices of the peace by resolution and may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set their salaries at the prior fiscal year level if that does not result in a reduction in salary. Salaries must meet the minimum requirements established by this section.

(2) If the salary of the justice of the peace was determined on a fee basis for the years 1971 and 1972, he shall receive a monthly salary of not less than one-eighteenth of the total fees, civil and criminal, collected by the justice or his predecessor in office during the 2 years 1971 and 1972.

(3) If the salary of the justice of the peace was determined on a nonfee basis for the years 1971 and 1972, the justice shall be paid not less than the highest salary earned by the justice or his predecessor for the years 1971 and 1972.

(4) The salary of the justice of the peace may not be less than the salary for the district clerk of the court in that county, except as provided for in subsections (1) and (5).

(5) In the event his court is not open for business full time, the justice's salary shall be commensurate to the workload and office hours of the court.

History: En. Sec. 1, Ch. 491, L. 1973; R.C.M. 1947, 93-413; amd. Sec. 1, Ch. 536, L. 1979; amd. Sec. 1, Ch. 12, Sp. L. June 1986.

Cross-References

Judicial salaries not to be diminished during term of office, Art. VII, sec. 7, Mont. Const.

Terms and salary of Justices of the Peace, Art. VII, sec. 7, Mont. Const.

Payment of salaries of county officials, 7-4-2502.

3-10-208. Office hours. In the resolution providing for the salary, the county commissioners shall designate the office hours for each justice's court. Office hours shall be commensurate with the salary provided.

History: En. Sec. 2, Ch. 491, L. 1973; R.C.M. 1947, 93-414; amd. Sec. 1, Ch. 492, L. 1983.

3-10-209. Expenses. All actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred by the justice of the peace in the performance of his official duties are a legal charge against the county.

History: En. Sec. 3, Ch. 491, L. 1973; R.C.M. 1947, 93-412(2); amd. Sec. 10, Ch. 528, L. 1979.

Cross-References

Expenses when acting as City Judge, 3-11-205.

3-10-210 through 3-10-220 reserved.

3-10-221. Duties of justices. Justices of the peace must perform such duties as are prescribed in this chapter, chapter 31 of Title 25, and Title 27 and any other duties prescribed by law.

History: En. Sec. 4552, Pol. C. 1895; re-en. Sec. 3099, Rev. C. 1907; re-en. Sec. 4862, R.C.M. 1921; Cal. Pol. C. Sec. 4316; re-en. Sec. 4862, R.C.M. 1935; amd. Sec. 12, Ch. 344, L. 1977; R.C.M. 1947, 16-3604; amd. Sec. 23, Ch. 21, L. 1979.

3-10-222. Collection and payment of moneys. Justices of the peace must receive from the sheriff or constable of their county all moneys collected on any process or order issued from their courts respectively and must pay the same and all moneys paid to them in their official capacity over to the parties entitled or authorized to receive them, without delay.

History: En. Sec. 644, p. 171, Bannack Stat.; re-en. Sec. 749, p. 186, Cod. Stat. 1871; re-en. Sec. 809, 1st Div. Rev. Stat. 1879; re-en. Sec. 829, 1st Div. Comp. Stat. 1887; amd. Sec. 1682, C. Civ. Proc. 1895; re-en. Sec. 7080, Rev. C. 1907; re-en. Sec. 9713, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 921; re-en. Sec. 9713, R.C.M. 1935; R.C.M. 1947, 93-7703.

Cross-References

Fines, penalties, forfeitures, fees, and costs in Justices' Courts, Title 3, ch. 10, part 6.

Applicability to Municipal Court, 25-30-101.

3-10-223 through 3-10-230 reserved.

3-10-231. Circumstances in which acting justice called in — by whom. (1) Whenever a justice of the peace is disqualified from acting in any action because of the application of the supreme court's rules on disqualification and substitution of judges, 3-1-803 and 3-1-805, the justice of the peace shall either transfer the action to another justice's court in the same county or call a justice from a neighboring county to preside.

(2) (a) The following requirements must be met to qualify a substitute for a justice of the peace:

(i) Within 30 days of taking office, a justice of the peace shall provide a list of persons who are qualified to hold court in the justice's place during a temporary absence when another justice or city judge is not available. The persons listed must be of good moral character and have community support, a sense of community standards, and a basic knowledge of court procedure.

(ii) The sitting justice of the peace shall request and obtain from the commission on courts of limited jurisdiction established by the supreme court a waiver of training for the substitutes.

(iii) Each person on the list, provided for in subsection (2)(a)(i), shall subscribe to the written oath of office as soon as possible after the person has received a waiver of training from the supreme court. The oath may be subscribed before any member of the board of county commissioners or before any other officer authorized to administer oaths.

(b) The list of qualified substitutes, the written oath, and the commission's written approval and waiver of training for those substitutes, pursuant to subsection (2)(a)(ii), must be filed with the county clerk as provided in 3-10-202.

(c) A county clerk may provide a current list of qualified and sworn substitutes to local law enforcement officers.

(3) Whenever a justice is sick, disabled, or absent, the justice may call in another justice, if there is one readily available, or a city judge or a person from the list provided for in subsection (2) to hold court for the absent justice until the absent justice's return. If the justice is unable to call in a substitute, the county commissioners shall call in another justice, a city judge, or a person from the list provided for in subsection (2).

(4) During the time when a justice of the peace is on vacation or attending a training session, another justice of the peace of the same county is authorized to handle matters that otherwise would be handled by the absent justice. When there is no other justice of the peace in the county, the justice of the peace may designate another person in the same manner as if the justice were sick or absent.

(5) A justice of the peace of any county may hold the court of any other justice of the peace at that justice's request.

History: (1) thru (3)En. Sec. 626, p. 168, Bannack Stat.; re-en. Sec. 732, p. 184, Cod. Stat. 1871; re-en. Sec. 792, 1st Div. Rev. Stat. 1879; re-en. Sec. 812, 1st Div. Comp. Stat. 1887; amd. Sec. 1683, C. Civ. Proc. 1895; re-en. Sec. 7081, Rev. C. 1907; re-en. Sec. 9714, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 922; re-en. Sec. 9714, R.C.M. 1935; amd. Sec. 24, Ch. 491, L. 1973; amd. Sec. 17, Ch. 420, L. 1975; amd. Sec. 51, Ch. 344, L. 1977; Sec. 93-7704,

R.C.M. 1947; (4)En. Sec. 62, C. Civ. Proc. 1895; re-en. Sec. 6281, Rev. C. 1907; re-en. Sec. 8835, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 105; amd. Sec. 2, Ch. 92, L. 1933; re-en. Sec. 8835, R.C.M. 1935; amd. Sec. 7, Ch. 491, L. 1973; amd. Sec. 10, Ch. 420, L. 1975; Sec. 93-403, R.C.M. 1947; R.C.M. 1947, 93-403(part), 93-7704(1); amd. Sec. 1, Ch. 482, L. 1985; amd. Sec. 5, Ch. 317, L. 1991; amd. Sec. 1, Ch. 150, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 150 in (1) substituted "3-1-803 and 3-1-805" for "subdivision 1, 2, or 3" and at end, after "preside", deleted "in his behalf"; in (2)(a) inserted introductory clause relating to requirements to qualify substitute Justice of the Peace; at end of (2)(a)(i), after second sentence, deleted "The county commissioners shall administer the oath of office to each"; inserted (2)(a)(ii) requiring sitting Justice of the Peace to obtain waiver of training for substitutes; in (2)(a)(iii), after "list", inserted "provided for in subsection (2)(a)(i), shall subscribe to the written oath of office" and inserted second sentence allowing oath to be subscribed before member of Board of County Commissioners or any other authorized officer; inserted (2)(b) requiring list, oath, and approval and waiver to be filed with County Clerk; inserted (2)(c) allowing County Clerk to provide list of substitutes to local law enforcement; and made minor changes in style. Amendment effective March 25, 1997.

Cross-References

Disqualification and substitution of judges, Title 3, ch. 1, part 8.

Applicability to Municipal Court, 25-30-101.

3-10-232. Docket entries by acting justice. When another justice or any other qualified person is called to preside in a justice's court, proper entries of all proceedings must be made in the docket of the justice for whom the visiting justice or person holds court. A justice holding court at the request of another justice must subscribe the entries. When the appointment is made by order of the county commissioners, the order shall be placed in the court docket.

History: En. Sec. 62, C. Civ. Proc. 1895; re-en. Sec. 6281, Rev. C. 1907; re-en. Sec. 8835, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 105; amd. Sec. 2, Ch. 92, L. 1933; re-en. Sec. 8835, R.C.M. 1935; amd. Sec. 7, Ch. 491, L. 1973; amd. Sec. 10, Ch. 420, L. 1975; R.C.M. 1947, 93-7704(3).

3-10-233. Jurisdiction of acting justice. When called in to preside over a justice's court, the visiting justice of the peace or other qualified person while acting as justice of the peace is vested with all the power of the justice for whom he holds court.

History: En. Sec. 62, C. Civ. Proc. 1895; re-en. Sec. 6281, Rev. C. 1907; re-en. Sec. 8835, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 105; amd. Sec. 2, Ch. 92, L. 1933; re-en. Sec. 8835, R.C.M. 1935; amd. Sec. 7, Ch. 491, L. 1973; amd. Sec. 10, Ch. 420, L. 1975; R.C.M. 1947, 93-7704(4).

3-10-234. Expenses of acting justice. Whenever a justice of the peace or another person is called in to preside over the court of a justice under 3-10-231, the visiting justice or other person shall be paid his actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503. If the acting justice is not a justice of the peace receiving a salary, he shall also receive such compensation as is proper for the time involved. The cost of implementing this section is a proper charge against the county where the court is held.

History: Ap. p. Sec. 626, p. 168, Bannack Stat.; re-en. Sec. 732, p. 184, Cod. Stat. 1871; re-en. Sec. 792, 1st Div. Rev. Stat. 1879; re-en. Sec. 812, 1st Div. Comp. Stat. 1887; amd. Sec. 1683, C. Civ. Proc. 1895; re-en. Sec. 7081, Rev. C. 1907; re-en. Sec. 9714, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 922; re-en. Sec. 9714, R.C.M. 1935; amd. Sec. 24, Ch. 491, L. 1973; amd. Sec. 17, Ch. 420, L. 1975; amd. Sec. 51, Ch. 344, L. 1977; Sec. 93-7704, R.C.M. 1947; Ap. p. Sec. 62, C. Civ. Proc. 1895; re-en. Sec. 6281, Rev. C. 1907; re-en. Sec. 8835, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 105; amd. Sec. 2, Ch. 92, L. 1933; re-en. Sec. 8835, R.C.M. 1935; amd. Sec. 7, Ch. 491, L. 1973; amd. Sec. 10, Ch. 420, L. 1975; Sec. 93-403, R.C.M. 1947; R.C.M. 1947, 93-403(part), 93-7704(2); amd. Sec. 11, Ch. 528, L. 1979.

Cross-References

Applicability to Municipal Court, 25-30-101.

Part 3

Jurisdiction of Justices' Courts

Part Cross-References

Basis for jurisdiction, Art. VII, sec. 5, Mont. Const.

Limits on jurisdiction, 3-5-302, 25-31-101.

Jurisdiction of Acting Justice of the Peace, 3-10-233.

Transfer to District Court, 25-31-102.

Jurisdiction concurrent with Youth Court, 41-5-203, 45-5-624.

3-10-301. Civil jurisdiction. (1) Except as provided in 3-11-103 and in subsection (2) of this section, the justices' courts have jurisdiction:

(a) in actions arising on contract for the recovery of money only if the sum claimed does not exceed $5,000, exclusive of court costs;

(b) in actions for damages not exceeding $5,000, exclusive of court costs, for taking, detaining, or injuring personal property or for injury to real property when no issue is raised by the verified answer of the defendant involving the title to or possession of the real property;

(c) in actions for damages not exceeding $5,000, exclusive of court costs, for injury to the person, except that, in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious prosecution, determination of paternity, and abduction, the justice of the peace does not have jurisdiction;

(d) in actions to recover the possession of personal property if the value of the property does not exceed $5,000;

(e) in actions for a fine, penalty, or forfeiture not exceeding $5,000, imposed by a statute or an ordinance of an incorporated city or town when no issue is raised by the answer involving the legality of any tax, impost, assessment, toll, or municipal fine;

(f) in actions upon bonds or undertakings conditioned for the payment of money when the sum claimed does not exceed $5,000, though the penalty may exceed that sum;

(g) to take and enter judgment for the recovery of money on the confession of a defendant when the amount confessed does not exceed $5,000, exclusive of court costs;

(h) to issue temporary restraining orders, as provided in 40-4-121, and orders of protection, as provided in Title 40, chapter 15.

(2) Justices' courts do not have jurisdiction in civil actions that might result in a judgment against the state for the payment of money.

History: En. Sec. 546, p. 150, Bannack Stat.; amd. Sec. 655, p. 167, Cod. Stat. 1871; re-en. Sec. 715, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 46, L. 1883; re-en. Sec. 735, 1st Div. Comp. Stat. 1887; amd. Sec. 66, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 76, L. 1907; re-en. Sec. 6286, Rev. C. 1907; re-en. Sec. 8840, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 112; re-en. Sec. 8840, R.C.M. 1935; amd. Sec. 11, Ch. 420, L. 1975; amd. Sec. 26, Ch. 344, L. 1977; R.C.M. 1947, 93-408; amd. Sec. 24, Ch. 21, L. 1979; amd. Sec. 3, Ch. 409, L. 1979; amd. Sec. 1, Ch. 348, L. 1981; amd. Sec. 1, Ch. 208, L. 1989; amd. Sec. 1, Ch. 307, L. 1991; amd. Sec. 1, Ch. 350, L. 1995.

Cross-References

Small claims division, Title 3, ch. 10, part 10.

Venue, Title 25, ch. 2.

Issues that cannot be presented in Justices' Courts, 25-31-101.

Transfer to District Court, 25-31-102.

Small claims procedure, Title 25, ch. 35, parts 5 through 8.

Confession of judgment, 27-9-101, 27-9-104.

Jurisdiction over Montana Livestock Marketing Act violations and misdemeanors, 81-8-217.

3-10-302. Jurisdiction over forcible entry, unlawful detainer, and residential landlord-tenant disputes. The justices' courts have concurrent jurisdiction with the district courts within their respective counties in actions of forcible entry and unlawful detainer and in actions brought under Title 70, chapter 24.

History: En. Sec. 67, C. Civ. Proc. 1895; re-en. Sec. 6287, Rev. C. 1907; re-en. Sec. 8841, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 113; re-en. Sec. 8841, R.C.M. 1935; amd. Sec. 12, Ch. 420, L. 1975; R.C.M. 1947, 93-409; amd. Sec. 1, Ch. 417, L. 1979.

Cross-References

Municipal Court jurisdiction, 3-6-103.

Jurisdiction, 70-27-101.

3-10-303. Criminal jurisdiction. The justices' courts have jurisdiction of public offenses committed within the respective counties in which the courts are established as follows:

(1) jurisdiction of all misdemeanors punishable by a fine not exceeding $500 or imprisonment not exceeding 6 months, or both;

(2) jurisdiction of all misdemeanor violations of fish and game statutes punishable by a fine of not more than $1,000 or imprisonment for not more than 6 months, or both;

(3) concurrent jurisdiction with district courts of all misdemeanors punishable by a fine exceeding $500 or imprisonment exceeding 6 months, or both;

(4) concurrent jurisdiction with district courts of all misdemeanor violations of fish and game statutes punishable by a fine exceeding $1,000 or imprisonment exceeding 6 months, or both;

(5) jurisdiction to act as examining and committing courts and for that purpose to conduct preliminary hearings;

(6) jurisdiction of all violations of Title 61, chapter 10; and

(7) all misdemeanor violations of Title 81, chapter 8, part 2.

History: Ap. p. Sec. 1, Ch. 196, L. 1967; amd. Sec. 11, Ch. 314, L. 1969; amd. Sec. 6, Ch. 465, L. 1977; Sec. 95-302, R.C.M. 1947; Ap. p. Sec. 68, C. Civ. Proc. 1895; re-en. Sec. 6288, Rev. C. 1907; re-en. Sec. 8842, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 115; re-en. Sec. 8842, R.C.M. 1935; amd. Sec. 13, Ch. 420, L. 1975; Sec. 93-410, R.C.M. 1947; R.C.M. 1947, 93-410, 95-302; amd. Sec. 3, Ch. 601, L. 1983; amd. Sec. 1, Ch. 612, L. 1983; amd. Sec. 1, Ch. 52, L. 1985; amd. Sec. 1, Ch. 318, L. 1985; amd. Sec. 1, Ch. 223, L. 1993.

Cross-References

Youth Court — concurrent jurisdiction over alcoholic beverage, tobacco products, and gambling violations, 41-5-203.

Jurisdiction of Justices' Courts, 46-2-202.

Notice to appear, 46-6-310.

Offense of partner or family member assault not to be included in bail schedule, 46-9-302.

Preliminary examination, 46-10-105.

Jurisdiction over Montana Livestock Marketing Act violations and misdemeanors, 81-8-217.

Fish and wildlife misdemeanor violations, 87-1-102, 87-1-111, 87-5-721.

3-10-304. Territorial extent of civil jurisdiction. The civil jurisdiction of a justice's court extends to the limits of the county in which it is held, and mesne and final process of a justice's court in a county may be issued to and served in any part of the county. A summons of a justice's court may be served as provided in 25-31-407.

History: En. Sec. 550, p. 151, Bannack Stat.; re-en. Sec. 656, p. 167, Cod. Stat. 1871; re-en. Sec. 716, 1st Div. Rev. Stat. 1879; re-en. Sec. 736, 1st Div. Comp. Stat. 1887; amd. Sec. 63, C. Civ. Proc. 1895; re-en. Sec. 6282, Rev. C. 1907; re-en. Sec. 8836, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 106; re-en. Sec. 8836, R.C.M. 1935; R.C.M. 1947, 93-404; amd. Sec. 25, Ch. 21, L. 1979.

Cross-References

Execution of judgment outside county in which obtained — lien on real property, 25-31-914.

3-10-305. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 632, p. 168, Bannack Stat.; re-en. Sec. 738, p. 185, Cod. Stat. 1871; re-en. Sec. 798, 1st Div. Rev. Stat. 1879; re-en. Sec. 818, 1st Div. Comp. Stat. 1887; re-en. Sec. 1680, C. Civ. Proc. 1895; re-en. Sec. 7078, Rev. C. 1907; re-en. Sec. 9711, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 919; re-en. Sec. 9711, R.C.M. 1935; R.C.M. 1947, 93-7701.

3-10-306. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 625, p. 167, Bannack Stat.; re-en. Sec. 731, p. 184, Cod. Stat. 1871; re-en. Sec. 791, 1st Div. Rev. Stat. 1879; re-en. Sec. 811, 1st Div. Comp. Stat. 1887; re-en. Sec. 1681, C. Civ. Proc. 1895; re-en. Sec. 7079, Rev. C. 1907; re-en. Sec. 9712, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 920; re-en. Sec. 9712, R.C.M. 1935; R.C.M. 1947, 93-7702.

Part 4

Contempts in Justices' Courts

Part Cross-References

Powers of judicial officers as to conduct of proceedings, 3-1-402.

Power to punish for contempt, 3-1-403.

Contempts, Title 3, ch. 1, part 5.

Contempt in City Court, 3-11-303.

Criminal contempts, 45-7-309.

3-10-401. Contempts a justice may punish for. A justice may punish for contempt persons guilty of the following acts and no other:

(1) disorderly, contemptuous, or insolent behavior toward the justice while holding the court tending to interrupt the due course of a trial or other judicial proceeding;

(2) a breach of the peace, boisterous conduct, or violent disturbance in the presence of the justice or in the immediate vicinity of the court held by him tending to interrupt the due course of a trial or other judicial proceeding;

(3) disobedience or resistance to the execution of a lawful order or process made or issued by the justice;

(4) disobedience to a subpoena duly served or refusal to be sworn or to answer as a witness;

(5) rescuing any person or property in the custody of an officer by virtue of an order or process of the court.

History: En. Sec. 1650, C. Civ. Proc. 1895; re-en. Sec. 7065, Rev. C. 1907; re-en. Sec. 9698, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 906; re-en. Sec. 9698, R.C.M. 1935; amd. Sec. 47, Ch. 344, L. 1977; R.C.M. 1947, 93-7501.

Cross-References

Power over conduct of proceedings, 3-1-402.

Power to punish for contempt, 3-1-403, 45-1-104.

What acts or omissions are contempts, 3-1-501.

Contempts City Judge may punish, 3-11-303.

Enforcement of order to deposit in court, 25-8-102.

Enforcement of judgment requiring performance of specific act, 25-13-203; Rule 70, M.R.Civ.P. (see Title 25, ch. 20).

Enforcement of child support order, 40-6-117.

Criminal contempt, 45-7-309.

3-10-402. Proceedings — contempt committed in presence of court. When a contempt is committed in the immediate view and presence of the justice, it may be punished summarily. To that end, an order must be made reciting the facts as they occurred and adjudging that the person proceeded against is thereby guilty of contempt and that he be punished as therein prescribed.

History: En. Sec. 1651, C. Civ. Proc. 1895; re-en. Sec. 7066, Rev. C. 1907; re-en. Sec. 9699, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 907; re-en. Sec. 9699, R.C.M. 1935; R.C.M. 1947, 93-7502.

Cross-References

Contempt in presence of court, 3-1-511.

3-10-403. Proceedings — contempt not in presence of court. When the contempt is not committed in the immediate view and presence of the justice, a warrant of arrest may be issued by such justice on which the person so guilty may be arrested and brought before the justice immediately, when an opportunity to be heard in his defense or excuse must be given. The justice may thereupon discharge him or may convict him of the offense.

History: En. Sec. 1652, C. Civ. Proc. 1895; re-en. Sec. 7067, Rev. C. 1907; re-en. Sec. 9700, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 908; re-en. Sec. 9700, R.C.M. 1935; R.C.M. 1947, 93-7503.

Cross-References

Generally, 3-1-512 through 3-1-523.

3-10-404. Punishment. A justice may punish for contempts by fine or imprisonment, or both; such fine not to exceed, in any one case, $100 and such imprisonment, 1 day.

History: En. Sec. 630, p. 168, Bannack Stat.; re-en. Sec. 736, p. 184, Cod. Stat. 1871; re-en. Sec. 796, 1st Div. Rev. Stat. 1879; re-en. Sec. 816, 1st Div. Comp. Stat. 1887; amd. Sec. 1653, C. Civ. Proc. 1895; re-en. Sec. 7068, Rev. C. 1907; re-en. Sec. 9701, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 909; re-en. Sec. 9701, R.C.M. 1935; R.C.M. 1947, 93-7504.

Cross-References

Power to punish for contempt, 3-1-403, 45-1-104, 45-7-308, 45-7-309.

3-10-405. Conviction in docket. The conviction, specifying particularly the offense and the judgment thereon, must be entered by the justice in his docket.

History: En. Sec. 631, p. 168, Bannack Stat.; re-en. Sec. 737, p. 184, Cod. Stat. 1871; re-en. Sec. 797, 1st Div. Rev. Stat. 1879; re-en. Sec. 817, 1st Div. Comp. Stat. 1887; amd. Sec. 1654, C. Civ. Proc. 1895; re-en. Sec. 7069, Rev. C. 1907; re-en. Sec. 9702, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 910; re-en. Sec. 9702, R.C.M. 1935; R.C.M. 1947, 93-7505.

Cross-References

Judgments and orders in contempt cases final, 3-1-523.

Part 5
Records in Justices' Courts

Part Cross-References

Transmittal of proceeds to County Treasurer, 3-10-601, 46-18-603.

Authority to administer oaths, 7-4-2209.

Registration of marriage — report to County Clerk of Court, 40-1-321.

Report to County Attorney, 46-9-203.

Record of proceedings, 46-17-102.

Availability of records to Department of Justice, 61-11-104.

Report to State Treasurer — exception, 61-12-701.

3-10-501. Contents of docket — electronic filing and storage of court records. (1) Each justice shall keep a book, denominated a "docket", in which the justice shall enter:

(a) the title of each action or proceeding;

(b) the object of the action or proceeding and, if a sum of money is claimed, the amount;

(c) the date of the summons and the time of its return and, if an order to arrest the defendant is made or a writ of attachment is issued, a statement of the fact;

(d) the time when the parties or either of them appear or their nonappearance if default is made; a minute of the pleading and motions, if in writing, referring to them, if not in writing, a concise statement of the material parts of the pleadings;

(e) each adjournment, stating on whose application and to what time;

(f) the demand for a trial by jury, when the demand is made, and by whom made; the order for the jury; and the time appointed for the return of the jury and for the trial;

(g) the names of the jurors who appear and are sworn and the names of all witnesses sworn and at whose request;

(h) the verdict of the jury and when received; if the jury disagree and is discharged, the fact of disagreement and discharge;

(i) the judgment of the court, specifying the costs included and the time when rendered, and an itemized statement of the costs;

(j) the issuing of the execution, when issued, and to whom; the renewals of the execution, if any, and when made; and a statement of any money paid to the justice, when paid, and by whom;

(k) the receipt of a notice of appeal, if any is given, and of the undertaking on appeal, if any is filed.

(2) The justice may elect to keep court documents by means of electronic filing or storage, or both, as provided in 3-1-114 and 3-1-115, in lieu of or in addition to keeping paper records.

History: Secs. 9703-9709, R.C.M. 1921, were en. Secs. 619-624, pp. 166, 167, Bannack Stat.; re-en. Secs. 725-730, pp. 183, 184, Cod. Stat. 1871; re-en. Secs. 785-790, 1st Div. Rev. Stat. 1879; re-en. Secs. 805-810, 1st Div. Comp. Stat. 1887; amd. Secs. 1660-1667, C. Civ. Proc. 1895. This section re-en. Sec. 7070, Rev. C. 1907; re-en. Sec. 9703, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 911; re-en. Sec. 9703, R.C.M. 1935; R.C.M. 1947, 93-7601; amd. Sec. 6, Ch. 174, L. 1995.

Cross-References

Docketing in District Courts, 3-5-508.

Small claims division — docket entries, 3-10-1005.

3-10-502. How entries made — prima facie evidence. (1) The items listed in 3-10-501 must be entered in the docket under the title of the action to which they relate and, unless otherwise provided, at the time when they occur.

(2) Such entries in a justice's docket or a transcript thereof certified by the justice or his successor in office are prima facie evidence of the facts so stated.

History: En. Sec. 1661, C. Civ. Proc. 1895; re-en. Sec. 7071, Rev. C. 1907; re-en. Sec. 9704, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 912; re-en. Sec. 9704, R.C.M. 1935; amd. Sec. 48, Ch. 344, L. 1977; R.C.M. 1947, 93-7602; amd. Sec. 26, Ch. 21, L. 1979.

Cross-References

Court reporter's transcript, 3-5-612; Rule 80, M.R.Civ.P. (see Title 25, ch. 20).

Small claims division — docket entries, 3-10-1005.

3-10-503. Index to docket — electronic filing and storage of court records. (1) A justice shall keep an alphabetical index to the docket, in which must be entered the names of the parties to each judgment, with a reference to the page of entry. The names of the plaintiffs and defendants must be entered in the index in the alphabetical order of the first letter of the family name.

(2) The justice may elect to keep the index by means of electronic filing or storage, or both, as provided in 3-1-114 and 3-1-115, in lieu of or in addition to keeping paper records.

History: En. Sec. 1662, C. Civ. Proc. 1895; re-en. Sec. 7072, Rev. C. 1907; re-en. Sec. 9705, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 913; re-en. Sec. 9705, R.C.M. 1935; R.C.M. 1947, 93-7603; amd. Sec. 7, Ch. 174, L. 1995.

3-10-504 through 3-10-510 reserved.

3-10-511. Records delivered to successor. Each justice of the peace, upon the expiration of the term of office, shall deposit with the justice's successor the official dockets and all papers or electronically filed or stored documents that were filed in the court during the justice's term of office or before, to be kept as public records.

History: En. Sec. 1663, C. Civ. Proc. 1895; re-en. Sec. 7073, Rev. C. 1907; re-en. Sec. 9706, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 914; re-en. Sec. 9706, R.C.M. 1935; R.C.M. 1947, 93-7604; amd. Sec. 8, Ch. 174, L. 1995.

Cross-References

Vacancies, 3-10-206.

3-10-512. Proceedings when office becomes vacant. If the office of a justice becomes vacant because of death or removal from the county or for any other cause before a successor is appointed, the docket and papers or electronically filed or stored documents that were in the justice's possession must be deposited in the office of some other justice in the county, who shall deliver them to the successor of the former justice. If there is no other justice in the county, the docket and papers or electronically filed or stored documents must be deposited in the office of the county clerk, who shall deliver them to the successor in office of the former justice.

History: En. Sec. 1664, C. Civ. Proc. 1895; re-en. Sec. 7074, Rev. C. 1907; re-en. Sec. 9707, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 915; re-en. Sec. 9707, R.C.M. 1935; amd. Sec. 22, Ch. 491, L. 1973; amd. Sec. 49, Ch. 344, L. 1977; R.C.M. 1947, 93-7605; amd. Sec. 9, Ch. 174, L. 1995.

Cross-References

Vacancies, 3-10-206.

3-10-513. Who is the successor. The justice appointed to fill a vacancy is the successor of the justice whose office became vacant before the expiration of a full term. When a full term expires, the person elected to take the numbered office, as provided in 3-10-201, from that time is the successor.

History: En. Sec. 1666, C. Civ. Proc. 1895; re-en. Sec. 7076, Rev. C. 1907; re-en. Sec. 9709, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 917; re-en. Sec. 9709, R.C.M. 1935; amd. Sec. 23, Ch. 491, L. 1973; amd. Sec. 50, Ch. 344, L. 1977; R.C.M. 1947, 93-7607.

Cross-References

Vacancies, 3-10-206.

3-10-514. Docket of predecessor. Any justice with whom the docket of his predecessor or of any other justice is deposited has and may exercise over all actions and proceedings entered in such docket the same jurisdiction as if originally commenced before him. In the case of the creation of a new county or the change of the boundary between two counties, any justice into whose hands the docket of a justice formerly acting as such within the same territory may come is, for the purpose of this section, considered the successor of such former justice.

History: En. Sec. 1665, C. Civ. Proc. 1895; re-en. Sec. 7075, Rev. C. 1907; re-en. Sec. 9708, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 916; re-en. Sec. 9708, R.C.M. 1935; R.C.M. 1947, 93-7606.

Cross-References

Vacancies, 3-10-206.

3-10-515 through 3-10-517 reserved.

3-10-518. Youth matters cited in justice's court — public record. Except as provided in 41-5-216, all filed matters related to a youth cited in a justice's court are a public record.

History: En. Sec. 2, Ch. 466, L. 1995.

Cross-References

Youth Court records — public record, 41-5-605.

Part 6

Fines, Penalties, Forfeitures, Fees, and Costs in Justices' Courts

Part Cross-References

Jurors' fees, Title 3, ch. 15, part 2.

Allowable costs, Title 25, ch. 10, part 2.

Witness fees, Title 26, ch. 2, part 5.

3-10-601. Collection and disposition of fines, penalties, forfeitures, and fees. (1) Each justice of the peace shall collect the fees prescribed by law for justices' courts and shall pay them into the county treasury of the county in which the justice of the peace holds office, on or before the 10th day of each month, to be credited to the general fund of the county.

(2) All fines, penalties, and forfeitures that are required to be imposed, collected, or paid in a justice's court must, for each calendar month, be paid by the justice's court on or before the 5th day of the following month to the treasurer of the county in which the justice's court is situated, except that they may be distributed as provided in 44-12-206 if imposed, collected, or paid for a violation of Title 45, chapter 9 or 10.

(3) The county treasurer shall, in the manner provided in 15-1-504, distribute money received under subsection (2) as follows:

(a) 50% to the state treasurer for deposit in the state general fund; and

(b) 50% to the county general fund.

History: En. Sec. 2, Ch. 84, L. 1917; re-en. Sec. 4930, R.C.M. 1921; re-en. Sec. 4930, R.C.M. 1935; amd. Sec. 9, Ch. 491, L. 1973; amd. Sec. 4, Ch. 420, L. 1975; amd. Sec. 15, Ch. 344, L. 1977; R.C.M. 1947, 25-307; amd. Sec. 1, Ch. 557, L. 1987; amd. Sec. 1, Ch. 296, L. 1991; amd. Sec. 3, Ch. 667, L. 1991; amd. Sec. 1, Ch. 39, Sp. L. November 1993; amd. Sec. 5, Ch. 18, L. 1995; amd. Sec. 3, Ch. 509, L. 1995; amd. Sec. 26, Ch. 546, L. 1995.

Cross-References

Collection and payment of money, 3-10-222.

State traffic education account, 20-7-504 through 20-7-507.

Poor person not required to prepay fees, 25-10-404.

Fees in civil actions, 25-31-112.

When fees payable, 25-31-113.

Taxing of costs, 25-31-1002.

Deposit of fines, 46-17-303.

Disposition of money collected as fines and costs, 46-18-235.

Disposition of fines and forfeitures, 46-18-603.

Crime victims compensation account, 53-9-109.

Use of fish and game money — exception, 87-1-601.

3-10-602. Penalty. Any justice of the peace violating 3-10-601 shall be deemed guilty of a misdemeanor, punishable by a fine not exceeding $1,000 or imprisonment not exceeding 6 months in the county jail, or both. He shall also be deemed guilty of malfeasance in office and, in the discretion of the court, may be removed from office, in which latter case he shall thereafter be disqualified from holding such office.

History: En. Sec. 3, Ch. 84, L. 1917; re-en. Sec. 4931, R.C.M. 1921; re-en. Sec. 4931, R.C.M. 1935; R.C.M. 1947, 25-308.

Cross-References

Disqualification, 3-1-602; Title 3, ch. 1, part 8; 3-10-231.

Collection and payment of money, 3-10-222.

Official misconduct, 45-7-401.

3-10-603. Repealed. Sec. 64, Ch. 557, L. 1987.

History: (1), (2)En. 25-310 by Sec. 1, Ch. 289, L. 1973; amd. Sec. 5, Ch. 420, L. 1975; amd. Sec. 1, Ch. 207, L. 1977; Sec. 25-310, R.C.M. 1947; (3)En. 25-311 by Sec. 1, Ch. 287, L. 1973; amd. Sec. 1, Ch. 114, L. 1975; amd. Sec. 6, Ch. 420, L. 1975; Sec. 25-311, R.C.M. 1947; R.C.M. 1947, 25-310, 25-311.

Part 7
Constables

3-10-701. Constables to attend court. Constables must attend the courts of justices of the peace within their counties whenever so required and execute, serve, and return all process and notices directed or delivered to them by a justice of the peace or by any competent authority of such county.

History: En. Sec. 4550, Pol. C. 1895; re-en. Sec. 3096, Rev. C. 1907; re-en. Sec. 4859, R.C.M. 1921; Cal. Pol. C. Sec. 4314; re-en. Sec. 4859, R.C.M. 1935; amd. Sec. 4, Ch. 253, L. 1975; R.C.M. 1947, 16-3601.

Cross-References

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

3-10-702. Governed by law prescribing sheriffs' duties. (1) All the provisions of 3-5-407, 7-32-2101, 7-32-2102, 7-32-2121(1) through (3) and (7) through (12), 7-32-2122, 7-32-2124, 7-32-2127, 7-32-2129 through 7-32-2131, 7-32-2250, 25-3-101, 25-3-202, 25-3-204 through 25-3-206, 25-3-301, 25-3-302, 25-13-403, 27-18-305, and 27-18-1505 apply to constables and govern their powers, duties, and liabilities.

(2) The provisions of 7-32-2141(1) apply to constables. Fees collected by a constable for services, as provided in 7-32-2141(1), must be paid to the county treasurer, as provided in 7-4-2511(2), and credited to the budget of the justice's court.

History: En. Sec. 4551, Pol. C. 1895; re-en. Sec. 3098, Rev. C. 1907; re-en. Sec. 4861, R.C.M. 1921; Cal. Pol. C. Sec. 4315; re-en. Sec. 4861, R.C.M. 1935; amd. Sec. 11, Ch. 344, L. 1977; R.C.M. 1947, 16-3603; amd. Sec. 1, Ch. 569, L. 1985; amd. Sec. 3, Ch. 16, L. 1991.

3-10-703. Compensation. The board of county commissioners shall, by resolution, on or before July 1 of each year, fix the salary of constables for the following fiscal year. Constables shall receive mileage, at the rate provided by law, when performing their official duties.

History: En. 25-312 by Sec. 9, Ch. 253, L. 1975; R.C.M. 1947, 25-312.

3-10-704. Deputy constables. If in any county there is no appointed constable, the board of county commissioners may, at the request of a party, after being satisfied that it is expedient to do so, specially deputize any proper person of suitable age not interested in the action to serve a summons, with or without an order to arrest the defendant and with or without a writ of attachment, or to serve an execution. The county commissioners are liable upon their official bonds for all official acts of the person so deputized. The appointment of the deputy shall be made in writing on the process, and a note thereof shall be made on the justice's docket.

History: En. Sec. 627, p. 168, Bannack Stat.; re-en. Sec. 733, p. 184, Cod. Stat. 1871; re-en. Sec. 793, p. 187, 1st Div. Rev. Stat. 1879; re-en. Sec. 813, 1st Div. Comp. Stat. 1887; amd. Sec. 1688, C. Civ. Proc. 1895; amd. Sec. 1, p. 138, L. 1899; re-en. Sec. 7086, Rev. C. 1907; re-en. Sec. 9719, R.C.M. 1921; re-en. Sec. 9719, R.C.M. 1935; amd. Sec. 25, Ch. 491, L. 1973; amd. Sec. 8, Ch. 253, L. 1975; amd. Sec. 53, Ch. 344, L. 1977; R.C.M. 1947, 93-7709.

Cross-References

Applicability to Municipal Court, 25-30-101.

3-10-705. Authority of deputy. The person so deputed shall have the authority of a constable in relation to the service, execution, and return of such process and shall be subject to the same obligations.

History: En. Sec. 628, p. 168, Bannack Stat.; re-en. Sec. 734, p. 184, Cod. Stat. 1871; re-en. Sec. 794, 1st Div. Rev. Stat. 1879; re-en. Sec. 814, 1st Div. Comp. Stat. 1887; re-en. Sec. 1689, C. Civ. Proc. 1895; re-en. Sec. 7087, Rev. C. 1907; re-en. Sec. 9720, R.C.M. 1921; re-en. Sec. 9720, R.C.M. 1935; R.C.M. 1947, 93-7710.

3-10-706. Execution of process by retiring constable. A constable, notwithstanding the expiration of his term of office, may proceed and complete the execution of all final process which he has begun to execute, in the same manner as if he were still in office, and his sureties shall be liable to the same extent.

History: En. Sec. 629, p. 168, Bannack Stat.; re-en. Sec. 735, p. 184, Cod. Stat. 1871; re-en. Sec. 795, 1st Div. Rev. Stat. 1879; re-en. Sec. 815, 1st Div. Comp. Stat. 1887; re-en. Sec. 1690, C. Civ. Proc. 1895; re-en. Sec. 7088, Rev. C. 1907; re-en. Sec. 9721, R.C.M. 1921; re-en. Sec. 9721, R.C.M. 1935; R.C.M. 1947, 93-7711.

Cross-References

Applicability to Municipal Court, 25-30-101.

Parts 8 and 9 reserved

Part 10
Small Claims Division

Part Cross-References
Small Claims Courts, Title 3, ch. 12.
Small claims procedure — Justice's Court, Title 25, ch. 35.

3-10-1001. Purpose. It is the purpose of this part and Title 25, chapter 35, to provide a speedy remedy for small claims and to promote a forum in which such claims may be heard and disposed of without the necessity of a formal trial.

History: En. 93-345 by Sec. 1, Ch. 572, L. 1977; R.C.M. 1947, 93-345; amd. Sec. 26, Ch. 586, L. 1981.

Cross-References
Generally, Title 25, ch. 35.

3-10-1002. Creation. There is established within the jurisdiction of each justice's court in this state a small claims division to be known as the "small claims court".

History: En. 93-346 by Sec. 2, Ch. 572, L. 1977; R.C.M. 1947, 93-346.

3-10-1003. Location — hours. The small claims division of justice's court shall be located at the same place as the justice's court and shall be open during the same hours as the justice's court.

History: En. 93-360 by Sec. 16, Ch. 572, L. 1977; R.C.M. 1947, 93-360.

3-10-1004. Jurisdiction — removal from district court. (1) The small claims court has jurisdiction over all actions for the recovery of money or specific personal property when the amount claimed does not exceed $3,000, exclusive of costs, and the defendant can be served within the county where the action is commenced.

(2) A district court judge may require any action filed in district court to be removed to the small claims court if the amount in controversy does not exceed $3,000. The small claims court shall hear any action so removed from the district court.

History: En. 93-347 by Sec. 3, Ch. 572, L. 1977; R.C.M. 1947, 93-347; amd. Sec. 27, Ch. 586, L. 1981; amd. Sec. 1, Ch. 438, L. 1989; amd. Sec. 2, Ch. 307, L. 1991.

Cross-References
Jurisdiction, 3-10-301, 25-35-502.
Small claims — Justice's Court, Title 25, ch. 35.

3-10-1005. Docket entries. The justice shall enter in the docket kept by him for small claims cases the following:

(1) the title of each action;

(2) the amount claimed;

(3) the date the order of court/notice to defendant was signed and the date of the trial as stated in the order;

(4) the date the parties appeared or the date on which default was entered;

(5) each adjournment, stating on whose application and to what time;

(6) the judgment of the court;

(7) a statement of any money paid to the justice, when, and by whom;

(8) the date of the issuance of any abstract of the judgment; and

(9) the date of the receipt of the notice of appeal, if any is given, and of the appeal bond, if any is filed.

History: **En. 93-361 by Sec. 17, Ch. 572, L. 1977; R.C.M. 1947, 93-361(2).**

Cross-References

Contents of docket, 3-10-501.

Entry of judgment, 25-35-801.

CHAPTER 11

CITY COURTS

Part 1 — Creation and Jurisdiction

3-11-101. City court established.
3-11-102. Concurrent jurisdiction.
3-11-103. Exclusive jurisdiction.
3-11-104. Exceptions to civil jurisdiction.

Part 2 — City Judges

3-11-201. Number of judges — term of office.
3-11-202. Salary — qualifications.
3-11-203. When substitute for judge called in.
3-11-204. Training sessions for judges.
3-11-205. Justice of the peace or judge of another city as city judge.
3-11-206. City to provide facilities — conduct of court business — electronic filing and storage of court records.

Part 3 — Procedure in City Courts

3-11-301. City attorney to prosecute.
3-11-302. Who named as plaintiff.
3-11-303. Contempts a city judge may punish for.

Part 1

Creation and Jurisdiction

Part Cross-References

Legislature authorized to establish City Courts, Art. VII, sec. 1, Mont. Const.

Several courts of this state, 3-1-101.

Election or appointment of City Judge, 7-4-4101 through 7-4-4114.

Limitation on service of City Court warrant of arrest, 7-32-4301, 7-32-4302, 46-6-215.

3-11-101. City court established. A city court is established in each city or town. A city judge shall establish regular sessions of the court. On judicial days, the court must be open for all business, civil and criminal. On nonjudicial days, as defined in 3-1-302, the court may transact criminal business only.

History: **(1)En. Sec. 4910, Pol. C. 1895; re-en. Sec. 3296, Rev. C. 1907; re-en. Sec. 5087, R.C.M. 1921; re-en. Sec. 5087, R.C.M. 1935; amd. Sec. 1, Ch. 165, L. 1975; amd. Sec. 2, Ch. 344, L. 1977; Sec. 11-1601, R.C.M. 1947; (2)En. Sec. 80, C. Civ. Proc. 1895; re-en. Sec. 6289, Rev. C. 1907; re-en. Sec. 8843, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 121; re-en. Sec. 8843, R.C.M. 1935; amd. Sec. 3, Ch. 165, L. 1975; Sec. 93-411, R.C.M. 1947; R.C.M. 1947, 11-1601, 93-411(1); amd. Sec. 1, Ch. 543, L. 1987; amd. Sec. 2, Ch. 292, L. 1995.**

Cross-References

Changing inaccurate terminology to conform with definition of City Court, 1-11-101.

3-11-102. Concurrent jurisdiction. (1) The city court has concurrent jurisdiction with the justice's court of all misdemeanors and proceedings mentioned and provided for under chapter 10, part 3, of this title.

(2) Applications for search warrants and complaints charging the commission of a felony may be filed in the city court. When they are filed, the city judge has the same jurisdiction and responsibility as a justice of the peace, including the holding of a preliminary hearing. The city attorney may file an application for a search warrant or a complaint charging the commission of a felony when the offense was committed within the city limits. The county attorney, however, must handle any action after a defendant is bound over to district court.

History: En. Sec. 4911, Pol. C. 1895; amd. Sec. 1, Ch. 16, L. 1903; re-en. Sec. 3297, Rev. C. 1907; re-en. Sec. 5088, R.C.M. 1921; Cal. Pol. C. Sec. 4426; re-en. Sec. 5088, R.C.M. 1935; amd. Sec. 1, Ch. 93, L. 1967; amd. Sec. 10, Ch. 240, L. 1971; amd. Sec. 11, Ch. 94, L. 1973; amd. Sec. 4, Ch. 274, L. 1974; amd. Sec. 2, Ch. 165, L. 1975; amd. Sec. 4, Ch. 344, L. 1977; R.C.M. 1947, 11-1602; amd. Sec. 2, Ch. 543, L. 1987.

Cross-References

Youth Court — concurrent jurisdiction over alcoholic beverage, tobacco products and gambling violations, 41-5-203.

Crimes — jurisdiction, 46-2-203.

Search warrants, Title 46, ch. 5, part 2.

3-11-103. Exclusive jurisdiction. Except as provided in 3-11-104, the city court has exclusive jurisdiction of:

(1) proceedings for the violation of an ordinance of the city or town, both civil and criminal;

(2) when the amount of the taxes or assessments sought does not exceed $5,000, actions for the collection of taxes or assessments levied for any of the following purposes, except that no lien on the property taxed or assessed for the nonpayment of the taxes or assessments may be foreclosed in any such action:

(a) city or town purposes;

(b) the erection or improvement of public buildings;

(c) the laying out, opening, or improving of a public street, sidewalk, alley, or bridge;

(d) the acquisition or improvement of any public grounds; and

(e) public improvements made or ordered by the city or town within its limits;

(3) actions for the collection of money due to the city or town or from the city or town to any person when the amount sought, exclusive of interest and costs, does not exceed $5,000;

(4) when the amount claimed, exclusive of costs, does not exceed $5,000, actions for:

(a) the breach of an official bond given by a city or town officer;

(b) the breach of any contract when the city or town is a party or is in any way interested;

(c) damages when the city or town is a party or is in any way interested;

(d) the enforcement of forfeited recognizances given to, for the benefit of, or on behalf of the city or town; and

(e) collection on bonds given upon an appeal taken from the judgment of the court in any action mentioned in subsections (4)(a) through (4)(d);

(5) actions for the recovery of personal property belonging to the city or town when the value of the property, exclusive of the damages for the taking or detention, does not exceed $5,000; and

(6) actions for the collection of a license fee required by an ordinance of the city or town.

History: En. Sec. 4912, Pol. C. 1895; re-en. Sec. 3298, Rev. C. 1907; re-en. Sec. 5089, R.C.M. 1921; Cal. Pol. C. Sec. 4427; re-en. Sec. 5089, R.C.M. 1935; amd. Sec. 5, Ch. 344, L. 1977; R.C.M. 1947, 11-1603; amd. Sec. 27, Ch. 21, L. 1979; amd. Sec. 6, Ch. 409, L. 1979; amd. Sec. 1, Ch. 348, L. 1985; amd. Sec. 3, Ch. 307, L. 1991.

Cross-References

Jurisdiction of Municipal Courts, 3-6-103.

Records of Municipal Courts, 3-6-302.

Civil jurisdiction of Justices' Courts, 3-10-301.

Crimes — jurisdiction, 46-2-203.

3-11-104. Exceptions to civil jurisdiction. City courts do not have jurisdiction in civil actions that might result in a judgment against the state for the payment of money.

History: En. Sec. 7, Ch. 409, L. 1979.

Cross-References

Crimes — jurisdiction, 46-2-203.

Part 2
City Judges

Part Cross-References

Vacancy in office, 2-16-501, 3-11-204, 7-4-4111, 7-4-4112.

Courts of limited jurisdiction — training and certification of judges, Title 3, ch. 1, part 15.

Qualifications, 7-4-4104.

3-11-201. Number of judges — term of office. (1) The governing body of a city may determine by ordinance the number of judges required to operate the city court.

(2) An elected or appointed city judge shall hold office for a term of 4 years and until the qualification of a successor.

(3) A justice of the peace designated to act as city judge for a city or town under 3-11-205 shall serve as city judge for the duration of the justice of the peace's term as justice of the peace or until the agreement provided for in 3-11-205 terminates.

History: En. Sec. 4, p. 122, L. 1893; amd. Sec. 4748, Pol. C. 1895; re-en. Sec. 3224, Rev. C. 1907; re-en. Sec. 5003, R.C.M. 1921; amd. Sec. 1, Ch. 60, L. 1935; re-en. Sec. 5003, R.C.M. 1935; amd. Sec. 1, Ch. 193, L. 1971; amd. Sec. 1, Ch. 343, L. 1971; R.C.M. 1947, 11-709(part); amd. Sec. 377, Ch. 571, L. 1979; amd. Sec. 3, Ch. 269, L. 1981; amd. Sec. 1, Ch. 416, L. 1983; amd. Sec. 3, Ch. 543, L. 1987; amd. Sec. 3, Ch. 292, L. 1995.

3-11-202. Salary — qualifications. (1) A city judge, at the time of election or appointment, shall:

(a) meet the qualifications of a justice of the peace under 3-10-202;

(b) be a resident of the county in which the city or town is located; and

(c) satisfy any additional qualifications prescribed by ordinance.

(2) The annual salary and compensation of city judges must be fixed by ordinance or resolution.

(3) Each city judge shall receive his actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of his official duties.

History: **En. Sec. 4765, Pol. C. 1895; re-en. Sec. 3241, Rev. C. 1907; amd. Sec. 1, Ch. 61, L. 1919; re-en. Sec. 5020, R.C.M. 1921; re-en. Sec. 5020, R.C.M. 1935; amd. Sec. 2, Ch. 76, L. 1953; amd. Sec. 2, Ch. 179, L. 1961; amd. Sec. 2, Ch. 158, L. 1965; amd. Sec. 1, Ch. 186, L. 1967; R.C.M. 1947, 11-726; amd. Sec. 12, Ch. 528, L. 1979; amd. Sec. 4, Ch. 543, L. 1987; amd. Sec. 1, Ch. 300, L. 1989.**

Cross-References

Salary of officers, 7-4-4201.

3-11-203. When substitute for judge called in. (1) The city judge or mayor may call in a city judge, a justice of the peace, or some qualified person to act in the judge's place whenever the judge is:

(a) a party in a case;

(b) interested in a case;

(c) the spouse of or related to either party in a case by consanguinity or affinity within the sixth degree; or

(d) sick, absent, or unable to act.

(2) The city judge may call in a city judge, justice of the peace, or some qualified person to act in his stead when a disqualifying affidavit is filed against him pursuant to the supreme court's rules on disqualification and substitution of judges.

(3) A city judge of any city or a justice of the peace of any county may sit as city judge at the city judge's request.

History: **En. Sec. 4913, Pol. C. 1895; re-en. Sec. 3299, Rev. C. 1907; re-en. Sec. 5090, R.C.M. 1921; Cal. Pol. C. Sec. 4428; re-en. Sec. 5090, R.C.M. 1935; amd. Sec. 2, Ch. 420, L. 1975; amd. Sec. 7, Ch. 344, L. 1977; R.C.M. 1947, 11-1604; amd. Sec. 28, Ch. 21, L. 1979; amd. Sec. 5, Ch. 543, L. 1987.**

Cross-References

Disqualification, Title 3, ch. 1, part 8.

3-11-204. Training sessions for judges. (1) There shall be two mandatory annual training sessions supervised by the supreme court for all elected and appointed city judges. One of the training sessions may be held in conjunction with the Montana magistrates' association convention. Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other materials shall be paid to the elected or appointed judge for attending the sessions. Whenever the office of city judge is held by a justice of the peace, the costs imposed by this subsection are the joint responsibility of the county and the municipality, with the costs to be allocated and charged in proportion to the work done for each governmental entity. In all other cases, the costs shall be paid by the city or town in which he holds or will hold court and shall be charged against that city or town.

(2) Each city judge shall attend the training sessions. Failure to attend disqualifies him from office and creates a vacancy in the office. However, the supreme court may excuse a city judge from attendance because of illness, a death in the family, or any other good cause.

History: **En. Sec. 80, C. Civ. Proc. 1895; re-en. Sec. 6289, Rev. C. 1907; re-en. Sec. 8843, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 121; re-en. Sec. 8843, R.C.M. 1935; amd. Sec. 3, Ch. 165, L. 1975; R.C.M. 1947, 93-411(2); amd. Sec. 2, Ch. 466, L. 1979; amd. Sec. 13, Ch. 528, L. 1979.**

Cross-References

Training and certification of judges, Title 3, ch. 1, part 15.

3-11-205. Justice of the peace or judge of another city as city judge. (1) In a town or third-class city, the council may designate a justice of the peace or the city judge of another city or town to act as city judge. The justice of the peace or city judge shall reside in the county in which the town or city is situated. The city or town may by ordinance fix the funding for such judge and enter into an agreement with the county, the other city or town, or the justice of the peace or the judge for payment of salaries and training expenses. The justice of the peace or other city judge shall, after agreeing to the designation and after approval by the board of county commissioners or governing body of the city or town, act in that capacity and shall be the city judge in all cases arising out of violations of statutes or ordinances. If the justice of the peace or city judge of another city or town must travel from his place of residence to hold court, he shall be paid his actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, by the town or city in which the court is held.

(2) The offices of city judge and justice of the peace may be combined if a justice of the peace is authorized in a city pursuant to 3-10-101.

History: (1)En. Sec. 4766, Pol. C. 1895; re-en. Sec. 3242, Rev. C. 1907; re-en. Sec. 5021, R.C.M. 1921; re-en. Sec. 5021, R.C.M. 1935; amd. Sec. 5, Ch. 491, L. 1973; amd. Sec. 1, Ch. 420, L. 1975; R.C.M. 1947, 11-727; amd. Sec. 29, Ch. 21, L. 1979; amd. Sec. 14, Ch. 528, L. 1979; (2)En. Sec. 2, Ch. 56, L. 1981; amd. Sec. 4, Ch. 269, L. 1981; amd. Sec. 1, Ch. 423, L. 1987; amd. Sec. 2, Ch. 300, L. 1989.

Cross-References

Expenses, 3-10-209.

3-11-206. City to provide facilities — conduct of court business — electronic filing and storage of court records. (1) The governing body of the city in which the judge has been elected or appointed shall provide for the judge:

(a) the office space, courtroom, and clerical assistance necessary to enable the judge to perform the judge's duties in dignified surroundings;

(b) the books, records, forms, papers, stationery, postage, office equipment, and supplies necessary for the proper keeping of the records and files of the judicial office and the transaction of business;

(c) one copy of the latest edition of the Montana Code Annotated and all official supplements or immediate access to the code and supplements.

(2) (a) Except as provided in subsection (2)(b), the provisions of 3-6-301 through 3-6-303 concerning conduct of municipal court business apply to the city court.

(b) If the governing body of a city establishes by ordinance the position of clerk of city court, 3-6-301 does not apply to the city court.

(3) The records of the court may be kept by means of electronic filing or storage, or both, as provided in 3-1-114 and 3-1-115, in lieu of or in addition to paper records.

History: En. Sec. 4, Ch. 466, L. 1979; amd. Sec. 2, Ch. 348, L. 1985; amd. Sec. 10, Ch. 174, L. 1995.

Part 3
Procedure in City Courts

Part Cross-References

Offense of partner or family member assault not to be included in bail schedule, 46-9-302.

3-11-301. City attorney to prosecute. Except as provided in 46-17-203, the city attorney must prosecute all cases for the violation of any ordinance and prosecute, conduct, and control all proceedings in cases mentioned in 3-11-103, both in the city court and on appeal from the city court to the district court.

History: En. Sec. 4917, Pol. C. 1895; re-en. Sec. 3303, Rev. C. 1907; re-en. Sec. 5094, R.C.M. 1921; re-en. Sec. 5094, R.C.M. 1935; R.C.M. 1947, 11-1608; amd. Sec. 2, Ch. 277, L. 1989.

Cross-References

Appellate jurisdiction of District Court, 3-5-301, 3-5-303.

Time for appeal, 25-33-102.

Criminal appeal, 46-17-311.

3-11-302. Who named as plaintiff. (1) A criminal action brought for violation of a city or town ordinance must be brought in the name of the city or town as the plaintiff and against the accused as the defendant.

(2) A criminal action brought for violation of a state law within the city or town may be brought either in the name of the state of Montana as the plaintiff or in the name of the city or town as the plaintiff and must be brought against the accused as the defendant.

(3) A criminal action brought for violation of a state law within the county and within its concurrent jurisdiction with the justice's court must be brought in the name of the state of Montana as the plaintiff and against the accused as the defendant.

(4) A civil action brought in the city court must be prosecuted or defended in the same manner as a civil action in justices' courts under the Montana Justice and City Court Rules of Civil Procedure (Title 25, chapter 23).

History: En. 11-1603.1 by Sec. 6, Ch. 344, L. 1977; R.C.M. 1947, 11-1603.1; amd. Sec. 1, Ch. 108, L. 1983; amd. Sec. 6, Ch. 543, L. 1987; amd. Sec. 4, Ch. 16, L. 1991.

Cross-References

Parties plaintiff and defendant — capacity, Rule 17, M.R.Civ.P. (see Title 25, ch. 20).

3-11-303. Contempts a city judge may punish for. A city judge may punish for contempt persons guilty of the following acts and no other:

(1) disorderly, contemptuous, or insolent behavior toward the judge while holding the court tending to interrupt the due course of a trial or other judicial proceeding;

(2) a breach of the peace, boisterous conduct, or violent disturbance in the presence of the judge or in the immediate vicinity of the court held by him tending to interrupt the due course of a trial or other judicial proceeding;

(3) disobedience or resistance to the execution of a lawful order or process made or issued by the judge;

(4) disobedience to a subpoena duly served or refusal to be sworn or to answer as a witness;

(5) rescuing any person or property in the custody of an officer by virtue of an order or process of the court.

History: En. Sec. 3, Ch. 466, L. 1979.

Cross-References

Powers of judicial officers as to conduct of proceedings, 3-1-111, 3-1-402.

Power to punish for contempt, 3-1-403.

Contempts, Title 3, chapter 1, part 5.

Contempts in Justices' Courts, Title 3, ch. 10, part 4.

Criminal contempts, 45-7-309.

CHAPTER 12

SMALL CLAIMS COURTS

Part 1 — General Provisions

3-12-101. Purpose — liberal construction.
3-12-102. Small claims court authorized.
3-12-103. Creation of court.
3-12-104. Duration of court.
3-12-105. Location — hours.
3-12-106. Repealed.
3-12-107. Procedure.

Part 2 — Small Claims Court Judge

3-12-201. Appointment — salary and expenses — qualifications.
3-12-202. Assistance to claimants.
3-12-203. Judge in multicounty district.

Part 1

General Provisions

Part Cross-References

Small claims division — Justices' Courts, Title 3, ch. 10, part 10.

3-12-101. Purpose — liberal construction. It is the purpose of this chapter to provide a speedy remedy in claims falling under this chapter and to promote a forum in which the claims may be heard and disposed of without the necessity of formal trial. For this reason, the provisions of this chapter should be liberally construed to provide an informal but equitable means of justice, and the judges appointed under this chapter are required to assist all parties before them to obtain substantial justice.

History: En. 93-328 by Sec. 7, Ch. 519, L. 1975; R.C.M. 1947, 93-328; amd. Sec. 2, Ch. 241, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 241 near beginning, after "of this chapter", deleted "and chapter 34 of Title 25"; and made minor changes in style. Amendment effective July 1, 1997.

3-12-102. Small claims court authorized. There may be created within the jurisdiction of the district court of any county of the state of Montana a separate court, known as the "small claims court".

History: En. 93-322 by Sec. 1, Ch. 519, L. 1975; R.C.M. 1947, 93-322.

3-12-103. Creation of court. (1) A small claims court may be created by a resolution passed by the board of county commissioners after consultation with the district court judges of the judicial district in which the county is located or by county initiative as provided in Title 7, chapter 5, part 1.

(2) Upon passage of the resolution or initiative, the judge of the appropriate judicial district shall, by court order, establish a small claims court under the provisions of this chapter.

(3) When the order is filed with the clerk of the district court of the appropriate county, the clerk of the district court becomes the clerk of the small claims court.

History: En. 93-323 by Sec. 2, Ch. 519, L. 1975; R.C.M. 1947, 93-323; amd. Sec. 30, Ch. 21, L. 1979; amd. Sec. 378, Ch. 571, L. 1979.

3-12-104. Duration of court. A small claims court created under this chapter continues in existence until abolished by the same means by which it was formed under 3-12-103. Any small claims court may be abolished by county initiative as provided in 3-12-103.

History: En. 93-324 by Sec. 3, Ch. 519, L. 1975; R.C.M. 1947, 93-324.

3-12-105. Location — hours. (1) The small claims court shall be located in the appropriate district and shall be open as required by the district judge.

(2) In the event that more than one small claims court judge has been appointed, the judges so appointed may divide their responsibility hereunder.

History: En. 93-326 by Sec. 5, Ch. 519, L. 1975; R.C.M. 1947, 93-326(part).

3-12-106. Repealed. Sec. 3, Ch. 241, L. 1997.

History: En. 93-329 by Sec. 8, Ch. 519, L. 1975; R.C.M. 1947, 93-329; amd. Sec. 2, Ch. 438, L. 1989; amd. Sec. 8, Ch. 10, L. 1993.

3-12-107. Procedure. A small claims court created under this chapter shall follow the small claims procedure used in justice's court, as provided in Title 25, chapter 35.

History: En. Sec. 1, Ch. 241, L. 1997.

Compiler's Comments

Effective Date: Section 5. Ch. 241, L. 1997, provided: "[This act] is effective July 1, 1997."

Part 2

Small Claims Court Judge

3-12-201. Appointment — salary and expenses — qualifications. (1) The judges of the judicial district in which a small claims court has been created shall appoint a judge of the small claims court who shall:

(a) take the oath required of judges;

(b) serve at the pleasure of the district court judges;

(c) be paid a salary set by the district court judges and actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503; and

(d) be an attorney licensed to practice law in Montana.

(2) The judges of the district court may appoint more than one small claims court judge for any small claims court. The salary shall be prorated among the judges appointed.

History: En. 93-325 by Sec. 4, Ch. 519, L. 1975; amd. Sec. 25, Ch. 344, L. 1977; R.C.M. 1947, 93-325; amd. Sec. 15, Ch. 528, L. 1979.

3-12-202. Assistance to claimants. The small claims court judge shall assist any claimant in preparing an affidavit or may direct the clerk of court to provide such assistance.

History: En. 93-326 by Sec. 5, Ch. 519, L. 1975; R.C.M. 1947, 93-326(part).

3-12-203. Judge in multicounty district. (1) Where there is more than one county in the judicial district and the county commissioners of more than one county in that district create small claims courts, the district judges may provide that the same judge of small claims court may preside over more than one of the small claims courts in the judicial district.

(2) In such cases the salary of the small claims court judge shall be prorated among the counties in which he presides.

(3) The judge shall be entitled to collect mileage for the distance actually traveled when required to convene small claims court in more than one county, pursuant to 2-18-503.

History: En. 93-327 by Sec. 6, Ch. 519, L. 1975; R.C.M. 1947, 93-327.

CHAPTERS 13 AND 14

RESERVED

CHAPTER 15

JURIES AND JURORS

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3-15-801. Summoning the juries.
3-15-802. Manner of impaneling.

Part 1
Juries — Definitions and Composition

3-15-101. Jury defined. A jury is a body of persons temporarily selected from the citizens of a particular district and invested with power to present or indict a person for a public offense or to try a question of fact.

History: En. Sec. 220, C. Civ. Proc. 1895; re-en. Sec. 6330, Rev. C. 1907; re-en. Sec. 8883, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 190; re-en. Sec. 8883, R.C.M. 1935; amd. Sec. 1, Ch. 203, L. 1939; R.C.M. 1947, 93-1201.

Cross-References

Examination in presence of jury defined, 1-1-202.

Residence of jurors, 3-15-302, 3-15-402, 3-15-506.

When issues of fact to be decided, 25-7-103, 25-7-302, 26-1-202.

Juror defined, 45-2-101.

3-15-102. Kinds of juries. Juries are of three kinds:

(1) grand juries;
(2) trial juries;
(3) juries of inquest.

History: En. Sec. 221, C. Civ. Proc. 1895; re-en. Sec. 6331, Rev. C. 1907; re-en. Sec. 8884, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 191; re-en. Sec. 8884, R.C.M. 1935; R.C.M. 1947, 93-1202.

3-15-103. Grand jury defined. A grand jury is a body of persons, 11 in number, returned as provided by law from the citizens of a county before a court of competent jurisdiction and sworn to inquire into public offenses committed or triable within the county.

History: En. Sec. 222, C. Civ. Proc. 1895; re-en. Sec. 6332, Rev. C. 1907; re-en. Sec. 8885, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 192; re-en. Sec. 8885, R.C.M. 1935; amd. Sec. 2, Ch. 203, L. 1939; amd. Sec. 34, Ch. 344, L. 1977; R.C.M. 1947, 93-1203.

Cross-References

Generally, Title 3, ch. 15, part 6.

3-15-104. Trial jury defined. A trial jury is a body of persons returned from the citizens of a particular district before a court or officer of competent jurisdiction and sworn to try and determine, by verdict, a question of fact.

History: En. Sec. 223, C. Civ. Proc. 1895; re-en. Sec. 6333, Rev. C. 1907; re-en. Sec. 8886, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 193; re-en. Sec. 8886, R.C.M. 1935; amd. Sec. 3, Ch. 203, L. 1939; R.C.M. 1947, 93-1204.

Cross-References

Jury trial rights, Art. II, sec. 26, Mont. Const.

Examination in presence of jury defined, 1-1-202.

Residence of jurors, 3-15-302, 3-15-402, 3-15-506.

Juror defined, 45-2-101.

3-15-105. Jury of inquest defined. A jury of inquest is a body of persons summoned from the citizens of a particular district before the sheriff, coroner, or other ministerial officer to inquire concerning particular facts.

History: En. Sec. 226, C. Civ. Proc. 1895; re-en. Sec. 6336, Rev. C. 1907; re-en. Sec. 8889, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 195; re-en. Sec. 8889, R.C.M. 1935; amd. Sec. 5, Ch. 203, L. 1939; R.C.M. 1947, 93-1207.

Cross-References

Generally, Title 3, ch. 15, part 8.

3-15-106. Number of a trial jury. (1) A trial jury consists of 12 persons or, with the approval of the court, it may consist of any number less than 12 upon which the parties agree in open court.

(2) In all civil actions where the relief asked for in the complaint is under the sum of $10,000, a trial jury may, in the discretion of the trial judge, consist of six persons and two-thirds of the jury may render a verdict.

History: En. Sec. 224, C. Civ. Proc. 1895; re-en. Sec. 6334, Rev. C. 1907; re-en. Sec. 8887, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 194; re-en. Sec. 8887, R.C.M. 1935; amd. Sec. 4, Ch. 203, L. 1939; amd. Sec. 1, Ch. 293, L. 1971; R.C.M. 1947, 93-1205(part); amd. Sec. 1, Ch. 92, L. 1989.

Cross-References

Persons drawn and approved to form jury, 25-7-205.

Manner of selection, Rule 47(b), M.R.Civ.P. (see Title 25, ch. 20).

Number of jurors, Rule 48, M.R.Civ.P. (see Title 25, ch. 20).

3-15-107. Number in justices' courts. A jury in a justice's court, in misdemeanors, consists of six persons, but the parties may agree to a less number than six.

History: En. Sec. 225, C. Civ. Proc. 1895; re-en. Sec. 6335, Rev. C. 1907; re-en. Sec. 8888, R.C.M. 1921; re-en. Sec. 8888, R.C.M. 1935; R.C.M. 1947, 93-1206; amd. Sec. 5, Ch. 16, L. 1991.

Part 2
Jurors' Fees

3-15-201. Fees in courts of record. (1) A grand or trial jury panel member shall receive $12 per day for attendance before any court of record and a mileage allowance, as provided in 2-18-503, for traveling each way between his residence and the county seat. Those jurors selected from the panel for a case shall receive an additional $13 a day while serving.

(2) A juror who is excused from attendance upon his own motion on the first day of his appearance in obedience to notice or who has been summoned as a special juror and not sworn in the trial of the case shall forfeit per diem and mileage.

History: En. Sec. 1, Ch. 48, L. 1903; re-en. Sec. 3178, Rev. C. 1907; amd. Sec. 1, Ch. 6, L. 1917; re-en. Sec. 4933, R.C.M. 1921; amd. Sec. 1, Ch. 18, L. 1935; re-en. Sec. 4933, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1945; amd. Sec. 1, Ch. 117, L. 1963; amd. Sec. 1, Ch. 332, L. 1971; amd. Sec. 10, Ch. 439, L. 1975; amd. Sec. 16, Ch. 344, L. 1977; R.C.M. 1947, 25-401; amd. Sec. 1, Ch. 200, L. 1981.

Cross-References

Mileage allowance for jurors, 2-18-503, 2-18-504.

Clerk to keep record, 3-5-510.

Fee for arbitration panel similarly computed, 75-7-115.

3-15-202. Repealed. Sec. 7, Ch. 200, L. 1981.

History: En. Sec. 2, p. 48, L. 1903; re-en. Sec. 3180, Rev. C. 1907; amd. Sec. 1, Ch. 23, L. 1913; re-en. Sec. 4934, R.C.M. 1921; re-en. Sec. 4934, R.C.M. 1935; R.C.M. 1947, 25-402.

3-15-203. Fees in courts not of record and coroner inquests. (1) A jury panel member in civil actions, criminal actions, and coroner inquests is entitled to a fee of $12 per day for attendance before a court not of record and a mileage allowance, as provided in 2-18-503, for traveling each way between his residence and the court. A jury panel member selected for a case is entitled to an additional $13 per day while serving.

(2) In civil actions, the jurors' fees must be paid by the party demanding the jury and taxed as costs against the losing party.

(3) A juror who is excused from attendance upon his own motion on the first day of his appearance in obedience to notice or who has been summoned as a special juror and not sworn in the trial of the case shall forfeit per diem and mileage.

History: En. Sec. 4647, Pol. C. 1895; re-en. Sec. 3181, Rev. C. 1907; re-en. Sec. 4935, R.C.M. 1921; re-en. Sec. 4935, R.C.M. 1935; amd. Sec. 1, Ch. 206, L. 1947; amd. Sec. 1, Ch. 154, L. 1969; amd. Sec. 2, Ch. 332, L. 1971; amd. Sec. 17, Ch. 344, L. 1977; R.C.M. 1947, 25-403; amd. Sec. 1, Ch. 231, L. 1979; amd. Sec. 1, Ch. 334, L. 1985; amd. Sec. 9, Ch. 660, L. 1991.

3-15-204. Duties of clerk as to jurors. (1) The clerk must keep a record of the attendance of jurors and compute the amount due for mileage. The distance from any point to the county seat must be determined by the shortest traveled route.

(2) The clerk must give to each juror, at the time he is excused from further service, a warrant signed by himself, in which must be stated the name of the juror, the number of days' attendance, the number of miles traveled, and the amount due.

(3) On presentation of such warrant to the county treasurer, the amount specified in the warrant must be paid out of the general fund unless the county has a district court fund. If the county has a district court fund, the amount must be paid out of such fund.

(4) The clerk must make a detailed statement containing a list of the jurors and the amount of fees and mileage earned by each and file the same with the clerk of the board of county commissioners on the first day of every regular meeting of the board. No quarterly salary must be paid the clerk until such statement is filed. The board must examine such statement and see that it is correct.

History: En. Sec. 4645, Pol. C. 1895; re-en. Sec. 3179, Rev. C. 1907; re-en. Sec. 4937, R.C.M. 1921; re-en. Sec. 4937, R.C.M. 1935; R.C.M. 1947, 25-405; amd. Sec. 3, Ch. 379, L. 1983; amd. Sec. 2, Ch. 66, L. 1985.

Cross-References

Travel expenses, 2-18-503, 2-18-504.

Duties of Clerk of District Court, 3-5-510.

3-15-205. Costs of impaneling jury. (1) In a civil action before a court of record in which the parties substantially agree to a settlement of the issues prior to impanelment of the jury and either settle the action or stipulate to a continuance and then fail or refuse to inform the court or clerk of court of the settlement or request a continuance and a jury is impaneled, the court may, upon hearing, assess the reasonable public expenses of impaneling the jury, including jury fees and mileage expenses paid or owing under 3-15-201, against any party.

(2) In civil actions, the court may assess against a party the reasonable public expenses of impaneling a jury, including jury fees and mileage expenses paid or owing under 3-15-201, if the court on an issue of law or the jury on an issue of fact determines that the party's case is frivolous or maintained for purposes of harassment. The court shall instruct the jury regarding the provisions of this subsection.

(3) Costs collected under this section must be deposited in the county general fund unless the county has a district court fund. If the county has a district court fund, the costs must be deposited in the district court fund.

History: En. Sec. 1, Ch. 299, L. 1981; amd. Sec. 3, Ch. 66, L. 1985; amd. Sec. 1, Ch. 356, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 356 in (1), near middle after "continuance and", inserted "then" and near end, after "3-15-201", deleted "and such other costs as may have been incurred by the court"; inserted (2) regarding assessment of certain reasonable public expenses; and made minor changes in style.

Cross-References

Costs, Title 25, ch. 10.

Part 3

Jurors — Competency and Excuses

3-15-301. Who competent. A person is competent to act as a juror if he is a registered elector whose name appears on the most recent list of all registered electors, as prepared by the county registrar.

History: Earlier statutes were Sec. 8, p. 506, Cod. Stat. 1871; amd. Sec. 1, p. 70, L. 1873; re-en. Sec. 780, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 57, L. 1881; re-en. Sec. 1304, 5th Div. Comp. Stat. 1887; re-en. Sec. 230, C. Civ. Proc. 1895; re-en. Sec. 6337, Rev. C. 1907; re-en. Sec. 8890, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 198; re-en. Sec. 8890, R.C.M.

1935; amd. Sec. 6, Ch. 203, L. 1939; amd. Sec. 1, Ch. 116, L. 1965; amd. Sec. 20, Ch. 240, L. 1971; amd. Sec. 32, Ch. 94, L. 1973; amd. Sec. 2, Ch. 298, L. 1975; R.C.M. 1947, 93-1301.

Cross-References

Selection of qualified persons, 3-15-402.

3-15-302. Inhabitants of local government jurisdiction competent. (1) On the trial of an action in which a city or town is interested, the inhabitants thereof are competent jurors if otherwise competent and qualified according to law.

(2) On the trial on an action in which the county is interested, the inhabitants of such county are competent jurors if otherwise competent and qualified according to law.

History: (1)En. Sec. 5042, Pol. C. 1895; re-en. Sec. 3941, Rev. C. 1907; re-en. Sec. 8891, R.C.M. 1921; re-en. Sec. 8891, R.C.M. 1935; Sec. 93-1302, R.C.M. 1947; (2)En. Sec. 341, 5th Div. Rev. Stat. 1879; re-en. Sec. 750, 5th Div. Comp. Stat. 1887; amd. Sec. 4198, Pol. C. 1895; re-en. Sec. 2878, Rev. C. 1907; re-en. Sec. 4449, R.C.M. 1921; re-en. Sec. 4449, R.C.M. 1935; Sec. 16-810, R.C.M. 1947; R.C.M. 1947, 16-810, 93-1302.

Cross-References

Residence, 3-15-101, 3-15-104, 3-15-506.

3-15-303. Who not competent. A person is not competent to act as juror:

(1) who does not possess the qualifications prescribed by 3-15-301; or

(2) who has been convicted of malfeasance in office or any felony or other high crime.

History: En. Sec. 231, C. Civ. Proc. 1895; re-en. Sec. 6338, Rev. C. 1907; re-en. Sec. 8892, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 199; re-en. Sec. 8892, R.C.M. 1935; R.C.M. 1947, 93-1303.

Cross-References

Selection of qualified persons, 3-15-402.

Disqualification, Rule 47(c), M.R.Civ.P. (see Title 25, ch. 20).

3-15-304 through 3-15-310 reserved.

3-15-311. Repealed. Sec. 7, Ch. 51, L. 1981.

History: En. Sec. 9, p. 506, Cod. Stat. 1871; re-en. Sec. 781, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 56, L. 1881; amd. Sec. 1, p. 101, L. 1883; re-en. Sec. 1305, 5th Div. Comp. Stat. 1887; amd. Sec. 232, C. Civ. Proc. 1895; re-en. Sec. 6339, Rev. C. 1907; amd. Sec. 1, Ch. 20, L. 1917; re-en. Sec. 8893, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 200; re-en. Sec. 8893, R.C.M. 1935; amd. Sec. 7, Ch. 203, L. 1939; amd. Sec. 1, Ch. 425, L. 1971; amd. Sec. 35, Ch. 344, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 93-1304(1) thru (3).

3-15-312. Discharge by court or jury commissioner. The court or jury commissioner with the approval of the court must discharge a person from serving as a trial juror in either of the following cases:

(1) when it satisfactorily appears that the person is not competent; or

(2) when it satisfactorily appears that the person should be excused under 3-15-313.

History: En. Sec. 9, p. 506, Cod. Stat. 1871; re-en. Sec. 781, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 56, L. 1881; amd. Sec. 1, p. 101, L. 1883; re-en. Sec. 1305, 5th Div. Comp. Stat. 1887; amd. Sec. 232, C. Civ. Proc. 1895; re-en. Sec. 6339, Rev. C. 1907; amd. Sec. 1, Ch. 20, L. 1917; re-en. Sec. 8893, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 200; re-en. Sec. 8893, R.C.M. 1935; amd. Sec. 7, Ch. 203, L. 1939; amd. Sec. 1, Ch. 425, L. 1971; amd. Sec. 35, Ch. 344, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 93-1304(4); amd. Sec. 1, Ch. 51, L. 1981; amd. Sec. 4, Ch. 379, L. 1983.

3-15-313. Who may be excused — affidavit to claim excuse — permanent exclusion for chronically incapacitated. (1) The court or jury commissioner with the approval of the court shall excuse a person from jury service upon finding that jury service would entail undue hardship for the person or the public served by the person.

(2) If a person believes jury service would entail undue hardship for the person or the public served, the person may make and transmit an affidavit to the jury commissioner for which the person is summoned, stating the person's occupation or other facts that the person believes will excuse the person from jury service. The affidavit must be filed with the jury commissioner, who shall transmit it to the court. The court or jury commissioner with the approval of the court may excuse a prospective juror from jury service if the prospective juror satisfies the provisions of subsection (1).

(3) A person who is chronically incapacitated by illness or injury may request a permanent exclusion from jury service by making and transmitting an affidavit to the jury commissioner of the person's place of residence. The affidavit must include a certification by the person's physician that the person is chronically incapacitated by illness or injury. The affidavit must be filed with the jury commissioner, who shall transmit it to the court. The court or jury commissioner with the approval of the court may permanently excuse a prospective juror from jury service if the prospective juror satisfies the provisions of this subsection (3).

(4) For purposes of subsection (3), a person is chronically incapacitated if the person has a condition due to an illness or injury that restricts the person's ability to leave the person's place of residence without the aid of supportive devices, such as crutches, a cane, a wheelchair, or a walker, that restricts the person's ability to leave home without the use of special transportation or the assistance of another person, or that causes leaving home to be medically contraindicated. Examples of factors to be taken into account in determining whether chronic incapacitation exists include but are not limited to the following:

(a) paralysis by a stroke or other cause;

(b) blindness;

(c) senility;

(d) loss of the use of a person's extremities requiring the assistance of another in leaving the person's place of residence;

(e) arteriosclerotic heart disease of such severity that a person must avoid all stress and physical activity; or

(f) a psychiatric problem if the illness is manifested in part by a refusal to leave home or is of such a nature that it would not be considered safe for the person to leave home unattended, even if there are no physical limitations.

History: En. Sec. 233, C. Civ. Proc. 1895; re-en. Sec. 6340, Rev. C. 1907; re-en. Sec. 8894, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 201; re-en. Sec. 8894, R.C.M. 1935; amd. Sec. 8, Ch. 203, L. 1939; R.C.M. 1947, 93-1305; amd. Sec. 2, Ch. 51, L. 1981; amd. Sec. 5, Ch. 379, L. 1983; amd. Sec. 1, Ch. 345, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 345 inserted (3) providing that a person who is chronically incapacitated may file an affidavit with the jury commissioner and, upon approval of the court, may be permanently excused from jury service; inserted (4) establishing what constitutes chronic incapacity for the purpose of being permanently excused from jury service; and made minor changes in style.

3-15-314. Repealed. Sec. 7, Ch. 51, and Sec. 7, Ch. 200, L. 1981.

History: **En. Sec. 234, C. Civ. Proc. 1895; re-en. Sec. 6341, Rev. C. 1907; re-en. Sec. 8895, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 202; re-en. Sec. 8895, R.C.M. 1935; amd. Sec. 9, Ch. 203, L. 1939; R.C.M. 1947, 93-1306.**

3-15-315 through 3-15-320 reserved.

3-15-321. Attachment and fine for failure to attend. Any juror summoned who willfully and without reasonable excuse fails to attend may be attached and compelled to attend. The court may impose a fine not exceeding $50, upon which execution may issue. If the juror was not personally served, the fine must not be imposed until, upon an order to show cause, an opportunity has been offered the juror to be heard. The court may for good cause remit, modify, or cause any fine collected to be refunded.

History: **En. Sec. 310, C. Civ. Proc. 1895; re-en. Sec. 6363, Rev. C. 1907; re-en. Sec. 8917, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 238; re-en. Sec. 8917, R.C.M. 1935; R.C.M. 1947, 93-1701.**

Cross-References

Failure to attend, 3-1-501, 25-7-206.

Part 4

Jury Lists

3-15-401. Jury lists — by whom and when made. The chairman or, in his absence, any member of the board of county commissioners and the county clerk and recorder of each county must meet at the county seat of each county at the office of the county clerk and recorder on the second Monday of June of each year for the purpose of making a list of persons to serve as trial jurors for the ensuing year. If they fail to meet on the day specified in this section, they must meet as soon thereafter as practicable.

History: **En. Sec. 240, C. Civ. Proc. 1895; re-en. Sec. 6342, Rev. C. 1907; re-en. Sec. 8896, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 204; re-en. Sec. 8896, R.C.M. 1935; amd. Sec. 1, Ch. 133, L. 1949; amd. Sec. 1, Ch. 86, L. 1959; R.C.M. 1947, 93-1401(part); amd. Sec. 1, Ch. 313, L. 1979; amd. Sec. 2, Ch. 200, L. 1981.**

Cross-References

Formation of jury, 46-17-202.

3-15-402. Selection of qualified persons. (1) Subject to subsection (2), at the meeting specified in 3-15-401, the officers present shall select from the most recent list of all registered electors, as prepared by the county registrar, and make a list of the names of all persons qualified to serve as trial jurors, as prescribed in part 3 of this chapter. Each name appearing on the list must be assigned a number that must be placed opposite the name on the jury list and must be considered the number of the juror opposite whose name it appears. The numbers must be consecutive from "1" to the total number of jurors. A person's name may not appear on a jury list for more than one court during a 1-year term.

(2) The list prepared under subsection (1) may not include the name of a person permanently excluded from jury service under 3-15-313.

History: **En. Sec. 241, C. Civ. Proc. 1895; re-en. Sec. 6343, Rev. C. 1907; amd. Sec. 1, Ch. 80, L. 1919; re-en. Sec. 8897, R.C.M. 1921; re-en. Sec. 8897, R.C.M. 1935; amd. Sec. 1, Ch. 168, L. 1957; amd. Sec. 1, Ch. 298, L. 1975; R.C.M. 1947, 93-1402; amd. Sec. 1, Ch. 159, L. 1991; amd. Sec. 2, Ch. 345, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 345 at beginning of (1) inserted "Subject to subsection (2)"; inserted (2) providing that the list of persons qualified to serve as jurors may not include a person permanently excluded from jury service under 3-15-313; and made minor changes in style.

Cross-References

Residence, 3-15-101, 3-15-104, 3-15-302, 3-15-506.

Jurors to be chosen from electors, 3-15-301.

3-15-403. Lists delivered to clerk. A list of the names of the persons selected, showing the place of residence and other proper particulars regarding each of them, so far as those particulars can be conveniently ascertained, must be made out and signed by the officers or a majority of them. Within 15 days after the meeting, the list must be delivered by those officers to the clerk of the district court and filed by him in his office.

History: En. Sec. 242, C. Civ. Proc. 1895; re-en. Sec. 6344, Rev. C. 1907; re-en. Sec. 8898, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 208; re-en. Sec. 8898, R.C.M. 1935; R.C.M. 1947, 93-1403; amd. Sec. 31, Ch. 21, L. 1979; amd. Sec. 3, Ch. 200, L. 1981.

3-15-404. Duty of jury commissioner — jury box or computer data base. (1) A county jury commissioner may by order establish the use of either a jury box as provided in subsection (2) or a computer data base as provided in subsection (3) as the means for selecting jurors in the county.

(2) If a county uses a jury box for selection of jurors, the jury commissioner shall prepare and keep a jury box and contents as prescribed in this subsection. The number of each juror shall be written, typed, or stamped on a slip of paper or other suitable material, identical in all respects to the slips used for the other numbers. The slips shall be placed in a box of ample size to permit them to be thoroughly mixed. The box shall be plainly marked "jury box". The slips may be used as often as necessary, except that none may be used which is in any manner defaced or disfigured or so marked that it may be recognized or distinguished from the others in the jury box except by the number thereon. The box shall contain only one slip for each number corresponding to the number before the name of each juror on the jury list.

(3) If a county uses a computer data base for selection of jurors, the jury commissioner shall cause the list of jurors prepared under the provisions of 3-15-402 to be entered into a computerized data base.

History: En. Sec. 243, C. Civ. Proc. 1895; re-en. Sec. 6345, Rev. C. 1907; amd. Sec. 1, Ch. 35, L. 1919; re-en. Sec. 8899, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 209; re-en. Sec. 8899, R.C.M. 1935; amd. Sec. 2, Ch. 168, L. 1957; amd. Sec. 1, Ch. 110, L. 1969; amd. Sec. 56, Ch. 344, L. 1977; R.C.M. 1947, 93-1404; amd. Sec. 1, Ch. 162, L. 1985.

Cross-References

Jury box used in drawing grand jury, 3-15-601.

3-15-405 through 3-15-410 reserved.

3-15-411. Term of service of jurors. (1) The persons whose names are so returned are known as regular jurors and must serve for 1 year and until other persons are selected and returned unless they are excused by the court or a judge pursuant to 3-15-501.

(2) If jurors are drawn before the selection and return of the new jury list as provided in this part and thereafter a new jury list is returned, they shall continue to serve as jurors, if the business of the court requires the attendance of a jury, for a period not exceeding 90 days.

(3) Notwithstanding such limitation of service, a jury composed of such jurors duly impaneled to try any cause shall continue to serve in such cause until discharged by the court from any further consideration of such cause. The fact that a new jury list has been returned shall not affect their status as jurors.

History: En. Sec. 245, C. Civ. Proc. 1895; re-en. Sec. 6347, Rev. C. 1907; re-en. Sec. 8901, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 210; amd. Sec. 1, Ch. 135, L. 1931; re-en. Sec. 8901, R.C.M. 1935; amd. Sec. 1, Ch. 4, L. 1947; R.C.M. 1947, 93-1406; amd. Sec. 2, Ch. 313, L. 1979.

Part 5

Trial Juries — District Court

Part Cross-References

Trial by jury, Art. II, sec. 26, Mont. Const.

Trial jury defined, 3-15-104.

Number in Justices' Courts, 3-15-107.

State's right to jury trial in criminal cases, 46-16-110, 46-17-201.

3-15-501. Order directing that trial jury be drawn and summoned. (1) At least once each year in each county, when a civil or criminal case has been at issue and ready for trial for more than 6 months and the plaintiff or defendant in such case has requested a jury trial, or whenever the business of a district court requires the attendance of a trial jury for the trial of civil or criminal cases and no jury is in attendance, the court must make an order directing a trial jury to be drawn and summoned to attend before said court. Such order must specify the number of jurors to be drawn. The time at which the jurors are required to attend must be at the discretion of the court.

(2) The court may direct that such causes, either criminal or civil, in which a jury may be required or in which a jury may have been demanded be continued and fixed for trial when a jury shall be in attendance.

(3) A district court may draw more than one trial jury in a given year if, in the opinion of the judge or judges thereof, the service of the trial jury in attendance has been unduly demanding, and in such case the trial jury in attendance may be excused by the court from further jury duty in that year.

(4) The judge or judges of a district or the judge of a department may designate that jury service in his or their district or department is on a "one-day or one-trial" basis; that is, each individual juror is excused for the rest of the year after having attended for 1 day and not having been selected to serve at the trial of a particular cause or after having completed service at such a trial.

(5) If the number of unexcused jurors is not sufficient to meet current requirements at any time, jurors excused under subsection (3) or (4) may be required to serve.

History: En. Sec. 260, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 7, L. 1907; re-en. Sec. 6348, Rev. C. 1907; re-en. Sec. 8902, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 214; re-en. Sec. 8902, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1949; R.C.M. 1947, 93-1501; amd. Sec. 3, Ch. 313, L. 1979; amd. Sec. 6, Ch. 379, L. 1983.

Cross-References

Term of service unless excused, 3-15-411.

3-15-502. Jury commissioner. The clerk of court is the jury commissioner, and the commissioner may appoint a deputy pursuant to 7-4-2401.

History: En. Sec. 261, C. Civ. Proc. 1895; re-en. Sec. 6349, Rev. C. 1907; re-en. Sec. 8903, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 215; re-en. Sec. 8903, R.C.M. 1935; amd. Sec. 1, Ch. 151, L. 1937; amd. Sec. 1, Ch. 3, L. 1939; amd. Sec. 3, Ch. 168, L. 1957; amd. Sec. 57,

Ch. 344, L. 1977; R.C.M. 1947, 93-1502; amd. Sec. 4, Ch. 200, L. 1981; amd. Sec. 7, Ch. 379, L. 1983.

Cross-References

Drawing by District Court Judge or jury commissioner, 25-7-202, 25-7-204.

3-15-503. Drawing — how conducted. (1) (a) If the drawing of jurors is conducted by means of a jury box, the jury commissioner shall place the box on a rod so that it may readily revolve. The box must be revolved a sufficient number of times to ensure that the numbered slips in it become thoroughly mixed. Thereafter the jury commissioner shall draw from the box, one at a time, as many of the numbered slips as are ordered by the court.

(b) If the drawing of jurors is conducted by means of a computerized data base, it must be conducted by use of a computerized random selection process that the judges of the district court of the county have approved in writing as satisfactorily fulfilling the requirements for the drawing of trial juries. A copy of the latest jury list and a description of the approved computerized random selection process must be kept in the office of the clerk of court and be available for public inspection during normal business hours.

(2) A record of the drawing shall be entered in the minutes of the court. It must show the names of the jurors corresponding to the numbers drawn from the jury box or the names drawn by means of the computerized random selection process.

(3) If the jury commissioner is satisfied that any person whose name is drawn is deceased or mentally incompetent or has permanently moved from the county, the name of the person shall be omitted from the list and another name shall be drawn in its place. The reason for the omission shall be entered upon the minutes of the court. The same procedure shall be followed as often as may be necessary, until the number of names of jurors required has been drawn.

(4) No person may be asked to serve for more than one term during any year unless all persons on the list established under 3-15-402 have been drawn and there are no other qualified jurors available.

History: En. Sec. 262, C. Civ. Proc. 1895; re-en. Sec. 6350, Rev. C. 1907; amd. Sec. 2, Ch. 35, L. 1919; re-en. Sec. 8904, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 219; amd. Sec. 1, Ch. 148, L. 1933; re-en. Sec. 8904, R.C.M. 1935; amd. Sec. 2, Ch. 151, L. 1937; amd. Sec. 2, Ch. 3, L. 1939; amd. Sec. 4, Ch. 168, L. 1957; amd. Sec. 2, Ch. 110, L. 1969; amd. Sec. 36, Ch. 344, L. 1977; R.C.M. 1947, 93-1503; amd. Sec. 4, Ch. 313, L. 1979; amd. Sec. 5, Ch. 200, L. 1981; amd. Sec. 2, Ch. 162, L. 1985.

Cross-References

Use of juror box, 25-7-202.

Drawing additional jurors, 25-7-206.

3-15-504. Drawing by two or more judges in same district. In districts where there are two or more judges, each judge may order jurors drawn and summoned to attend the session or term over which he presides, as provided in this part.

History: En. Sec. 267, C. Civ. Proc. 1895; re-en. Sec. 6355, Rev. C. 1907; re-en. Sec. 8909, R.C.M. 1921; re-en. Sec. 8909, R.C.M. 1935; R.C.M. 1947, 93-1508.

3-15-505. Notice to jurors. The clerk shall serve notice by mail on the persons drawn as jurors and require response thereto by mail as to their qualifications to serve as trial jurors. He may attach to the notice a jury questionnaire and a form for an affidavit claiming an excuse as provided for in

3-15-313. If a person fails to respond to the notice, the clerk shall certify the failure to the sheriff, who shall then serve notice personally on such person and require a response to the notice.

History: En. Sec. 280, C. Civ. Proc. 1895; re-en. Sec. 6356, Rev. C. 1907; amd. Sec. 1, Ch. 9, L. 1911; re-en. Sec. 8910, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 225; re-en. Sec. 8910, R.C.M. 1935; amd. Sec. 1, Ch. 88, L. 1959; R.C.M. 1947, 93-1509; amd. Sec. 5, Ch. 313, L. 1979; amd. Sec. 3, Ch. 51, L. 1981; amd. Sec. 8, Ch. 379, L. 1983.

Cross-References

Summoning jurors, 3-15-701, 3-15-703, 3-15-801, 25-7-206.

3-15-506. Obtaining additional jurors when necessary. (1) Whenever it appears to a district judge that additional jurors will be needed for any term or trial, the jury commissioner shall draw as many jurors as are necessary to secure the required number of additional jurors. Before the jury commissioner draws the jurors, the judge shall by appropriate order designate the number of jurors needed.

(2) When the judge believes that securing the additional jurors from all of the county would cause unnecessary delay or expense, he may order the jurors selected from only a designated portion of the county, which portion shall never be less than the corporate limits of the county seat. If, in the selection of the additional jurors, a juror is drawn who is a resident of an area outside the area designated by the court order, that juror's name or number shall be returned to the jury box or reinstated on the computer data base and a new juror drawn.

(3) When the required number of names have been selected, the judge may order the prospective jurors notified by telephone or mail by the jury commissioner.

History: En. Sec. 3, Ch. 110, L. 1969; amd. Sec. 58, Ch. 344, L. 1977; R.C.M. 1947, 93-1512; amd. Sec. 6, Ch. 313, L. 1979; amd. Sec. 6, Ch. 200, L. 1981; amd. Sec. 3, Ch. 162, L. 1985.

Cross-References

Residence, 3-15-101, 3-15-104, 3-15-302, 3-15-402.

Drawing additional jurors, 25-7-206; 25-7-304; Rule 47(b), M.R.Civ.P. (see Title 25, ch. 20).

Selection of jury in commitment hearing, 53-21-125.

3-15-507. Clerk to call list of jurors summoned and prepare ballots. (1) At the opening of court on the day trial jurors have been summoned to appear, the clerk shall call the names of those summoned and not excused.

(2) The names of the jurors present and not excused must be written on separate ballots with the names concealed. The clerk shall deposit the ballots in a box large enough to hold all of the ballots without crowding. The box shall be so arranged that the judge or clerk drawing the ballots from the box is unable to see the ballots he is about to draw.

History: En. Sec. 330, C. Civ. Proc. 1895; re-en. Sec. 6368, Rev. C. 1907; amd. Sec. 8, Ch. 35, L. 1919; re-en. Sec. 8922, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 246; re-en. Sec. 8922, R.C.M. 1935; amd. Sec. 40, Ch. 344, L. 1977; R.C.M. 1947, 93-1805; amd. Sec. 4, Ch. 51, L. 1981; amd. Sec. 9, Ch. 379, L. 1983.

Cross-References

Costs of calling jurors — civil trial, 3-15-203.

Failure of juror to attend trial, 3-15-321.

Calling jurors to report, Rule 47(b), M.R.Civ.P. (see Title 25, ch. 20.); 46-17-202.

3-15-508. Repealed. Sec. 7, Ch. 200, L. 1981.

History: **En. Sec. 6369A, Rev. C. 1907 by Sec. 9, Ch. 35, L. 1919; re-en. Sec. 8924, R.C.M. 1921; re-en. Sec. 8924, R.C.M. 1935; R.C.M. 1947, 93-1807.**

3-15-509. Manner of impaneling. (1) Whenever a civil action is called by the court for trial and a jury is required, the trial jury shall be impaneled as prescribed in Title 25, chapter 7, part 2, and Rule 47, M.R.Civ.P.

(2) When the action is a criminal one, the jury shall be impaneled as prescribed in Title 46.

History: **En. Sec. 331, C. Civ. Proc. 1895; re-en. Sec. 6369, Rev. C. 1907; re-en. Sec. 8923, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 247; re-en. Sec. 8923, R.C.M. 1935; amd. Sec. 41, Ch. 344, L. 1977; R.C.M. 1947, 93-1806.**

Cross-References

Impaneling, 25-7-201; Rule 47(b), M.R.Civ.P. (see Title 25, ch. 20).

Part 6
Grand Juries

3-15-601. When and how drawn and summoned. (1) Whenever in the opinion of the district judge a grand jury is necessary, he must make an order directing a grand jury to be drawn and summoned to attend before the court. The order must specify the number of jurors to be drawn, which may not be less than 15 or more than 20.

(2) The jurors must be drawn from the jury box or the computer data base provided for in 3-15-404. If jurors are selected from the computer data base, it must be through a computerized random selection process that the judges of the district court of the county have approved in writing as the requirements for the drawing of grand juries. A copy of the latest jury list and a description of the approved computer process employed in the selection must be kept in the office of the clerk of court and be available for public inspection during normal business hours.

(3) The list of names shall be certified and the jurors summoned in the same manner as for trial jurors. The names or numbers of any persons drawn who are not impaneled on the grand jury must be returned to the jury box or reinstated on the computer data base.

History: **En. Sec. 320, C. Civ. Proc. 1895; re-en. Sec. 6364, Rev. C. 1907; re-en. Sec. 8918, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 241; re-en. Sec. 8918, R.C.M. 1935; amd. Sec. 4, Ch. 3, L. 1973; amd. Sec. 59, Ch. 344, L. 1977; R.C.M. 1947, 93-1801; amd. Sec. 32, Ch. 21, L. 1979; amd. Sec. 4, Ch. 162, L. 1985.**

Cross-References

Residence, 3-15-101, 3-15-103, 3-15-104, 3-15-302.

3-15-602. Who constitutes jury. (1) When 11 of the persons summoned as grand jurors who are competent and not excused are present, they constitute the grand jury.

(2) When more than 11 are present, the jury commissioner shall write their names on separate ballots and place the ballots in black capsules. The capsules shall be deposited in a box large enough to hold all of the capsules without crowding. The box shall be so arranged that the jury commissioner drawing the capsules from the box is unable to see the capsule he is about to draw. The jury

commissioner shall draw 11 capsules. The persons whose names are on the ballots so drawn shall constitute the grand jury.

(3) When less than 11 are present, the court shall order a sufficient number to be immediately drawn as provided in 3-15-601(2) and summoned to attend the court.

History: En. Sec. 321, C. Civ. Proc. 1895; re-en. Sec. 6365, Rev. C. 1907; amd. Sec. 7, Ch. 35, L. 1919; re-en. Sec. 8919, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 242; re-en. Sec. 8919, R.C.M. 1935; amd. Sec. 5, Ch. 3, L. 1973; amd. Sec. 38, Ch. 344, L. 1977; R.C.M. 1947, 93-1802; amd. Sec. 5, Ch. 162, L. 1985.

3-15-603. Manner of impaneling. After the jurors have been selected, the grand jury shall be impaneled as prescribed in 46-11-301 through 46-11-303.

History: En. Sec. 322, C. Civ. Proc. 1895; re-en. Sec. 6366, Rev. C. 1907; re-en. Sec. 8920, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 243; re-en. Sec. 8920, R.C.M. 1935; amd. Sec. 39, Ch. 344, L. 1977; R.C.M. 1947, 93-1803.

3-15-604. Drawing and summoning in multijudge districts. In districts where there are two or more judges, each judge may order a grand jury to be drawn and summoned to attend the session or term over which he presides, as provided in this part, but no more than one grand jury must ever be in attendance upon any district court at the same time.

History: En. Sec. 323, C. Civ. Proc. 1895; re-en. Sec. 6367, Rev. C. 1907; re-en. Sec. 8921, R.C.M. 1921; re-en. Sec. 8921, R.C.M. 1935; R.C.M. 1947, 93-1804.

Part 7

Juries in Courts of Limited Jurisdiction

Part Cross-References

Costs of calling jurors — civil trial, 3-15-203.

Failure of juror to attend trial, 3-15-321.

Calling jurors to report, 46-17-202.

3-15-701. When and by whom jurors summoned. When jurors are required in any court of limited jurisdiction, they:

(1) must, upon the order of the judge thereof, be summoned by the sheriff, constable, marshal, or policeman of the jurisdiction; or

(2) may be summoned by the judge of the court of limited jurisdiction or by the clerk of that court.

History: En. Sec. 290, C. Civ. Proc. 1895; re-en. Sec. 6359, Rev. C. 1907; re-en. Sec. 8913, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 230; re-en. Sec. 8913, R.C.M. 1935; R.C.M. 1947, 93-1601; amd. Sec. 8, Ch. 466, L. 1979; amd. Sec. 1, Ch. 351, L. 1991.

Cross-References

Summoning by Sheriff, 3-15-505, 3-15-801, 25-7-206.

Summoning by Constable, 3-15-801.

3-15-702. How to be summoned. Such jurors must be summoned from the persons competent to serve as jurors, residents of the county, city, or town in which such court has jurisdiction, by notifying them orally or by mail that they are summoned and of the time and place at which their attendance is required.

History: En. Sec. 291, C. Civ. Proc. 1895; re-en. Sec. 6360, Rev. C. 1907; re-en. Sec. 8914, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 231; re-en. Sec. 8914, R.C.M. 1935; amd. Sec. 14, Ch. 491, L. 1973; R.C.M. 1947, 93-1602; amd. Sec. 2, Ch. 351, L. 1991.

Cross-References

Residence, 3-15-101, 3-15-104, 3-15-302.

Summoning by police, 3-15-801.

3-15-703. Officer's return. The officer summoning the jurors shall, at the time fixed in the order for their appearance, return the order to the court with a list of the persons summoned endorsed thereon.

History: En. Sec. 292, C. Civ. Proc. 1895; re-en. Sec. 6361, Rev. C. 1907; re-en. Sec. 8915, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 232; re-en. Sec. 8915, R.C.M. 1935; amd. Sec. 37, Ch. 344, L. 1977; R.C.M. 1947, 93-1603.

3-15-704. Forming jury. At the time appointed for a jury trial in a justice's or city court or any other court of limited jurisdiction, the list of jurors summoned must be called. The jurors summoned shall be 12 in number or double the number agreed upon by the parties before the trial. The names of those attending and not excused must be written upon separate slips of paper, which slips must be folded so as to conceal the names, and placed in a box from which the trial jury must be drawn.

History: En. Sec. 340, C. Civ. Proc. 1895; re-en. Sec. 6370, Rev. C. 1907; re-en. Sec. 8925, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 250; re-en. Sec. 8925, R.C.M. 1935; R.C.M. 1947, 93-1808; amd. Sec. 33, Ch. 21, L. 1979; amd. Sec. 9, Ch. 466, L. 1979.

3-15-705. Manner of impaneling. The jury must be impaneled as provided in:

(1) Title 46, if the action is a criminal one;

(2) Title 25, chapter 7, part 2, and Rule 18B, Montana Justice and City Court Rules of Civil Procedure, if the action is a civil one.

History: En. Sec. 341, C. Civ. Proc. 1895; re-en. Sec. 6371, Rev. C. 1907; re-en. Sec. 8926, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 251; re-en. Sec. 8926, R.C.M. 1935; amd. Sec. 42, Ch. 344, L. 1977; R.C.M. 1947, 93-1809; amd. Sec. 6, Ch. 16, L. 1991.

Cross-References

Impaneling, 3-15-509, 25-7-201.

Part 8

Juries of Inquest

3-15-801. Summoning the juries. Juries of inquest shall be summoned by the officer before whom the proceedings in which they are to sit are to be had or by any sheriff, constable, or policeman from the persons competent to serve as jurors, residents of the county, by notifying them orally that they are so summoned and of the time and place at which their attendance is required.

History: En. Sec. 300, C. Civ. Proc. 1895; re-en. Sec. 6362, Rev. C. 1907; re-en. Sec. 8916, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 235; re-en. Sec. 8916, R.C.M. 1935; R.C.M. 1947, 93-1604.

Cross-References

Residence, 3-15-101, 3-15-104, 3-15-105, 3-15-302.

Summoning by Sheriff, 3-15-505, 3-15-701, 3-15-703, 25-7-206.

Summoning by Constable, 3-15-701, 3-15-703.

3-15-802. Manner of impaneling. The manner of impaneling juries of inquest is prescribed in the provisions of the different statutes relating to such inquests.

History: En. Sec. 350, C. Civ. Proc. 1895; re-en. Sec. 6372, Rev. C. 1907; re-en. Sec. 8927, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 254; re-en. Sec. 8927, R.C.M. 1935; R.C.M. 1947, 93-1810.

Cross-References

Impaneling, 3-15-509, 25-7-201.

TITLE 4

RESERVED

TITLE 5

LEGISLATIVE BRANCH

Ch.
1. Congressional, Senatorial, and Representative Districts.
2. Legislature — Composition and Organization.
3. Special Sessions.
4. Bills.
5. Legislative Procedures.
6. Legislative Interns.
7. Lobbying.
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11. Legislative Council and Publication of Laws.
12. Legislative Finance Act.
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14. Administrative Code Committee.
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17. Capitol Building and Planning — Restoration.
18. Revenue Oversight Committee.
19. Committee on Indian Affairs.
20. Educational Committees.
21. Committee on Public Employee Retirement Systems.
22. Committee on Children and Families.
23. Committee on State Management Systems.

CHAPTER 1

CONGRESSIONAL, SENATORIAL, AND REPRESENTATIVE DISTRICTS

Part 1 — Districting and Apportionment Commission

5-1-101. Commission to redistrict and reapportion — number of legislators.
5-1-102. Composition of commission.
5-1-103. Vacancy on commission.
5-1-104. Compensation and expenses.
5-1-105. Restriction on commissioners seeking election to legislature.
5-1-106. Legislative services division to provide technical and clerical services.
5-1-107. Assistance of state agencies.
5-1-108. Public hearing on plans.
5-1-109. Submission of plan for legislative redistricting to legislature.
5-1-110. Recommendations of legislature.
5-1-111. Final plan — dissolution of commission.

Chapter Cross-References

Elections, Title 13.

Election records to be kept by Secretary of State, 13-1-204.

Part 1

Districting and Apportionment Commission

Part Cross-References

Districting and reapportionment, Art. V, sec. 14, Mont. Const.

5-1-101. Commission to redistrict and reapportion — number of legislators. (1) In each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare the plans for redistricting and reapportioning the state into legislative and congressional districts.

(2) The plans for redistricting and reapportionment of legislative districts must be based on the number of members in the house of representatives and the senate to be determined in the legislative session before the census.

History: En. Sec. 1, Ch. 21, L. 1973; R.C.M. 1947, 43-108; amd. Sec. 1, Ch. 477, L. 1983; amd. Sec. 1, Ch. 176, L. 1987.

Cross-References

Size of Legislature, Art. V, sec. 2, Mont. Const.

Public officers, Title 2, ch. 16.

Composition of Legislature, 5-2-101.

Officers of Senate and House of Representatives, 5-2-221.

5-1-102. Composition of commission. (1) The majority and minority leaders of each house shall each designate one commissioner. A commissioner must be appointed from each district listed in subsection (2). The majority leader in the senate has first choice of the district from which the majority leader will select a commissioner, and the majority leader of the house has second choice. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as the presiding officer of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select the fifth member.

(2) The commission districts are the following counties:

(a) District 1: Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, and Ravalli;

(b) District 2: Lewis and Clark, Powell, Granite, Deer Lodge, Silver Bow, Jefferson, Broadwater, Meagher, Beaverhead, Madison, Gallatin, and Park;

(c) District 3: Glacier, Toole, Liberty, Hill, Blaine, Phillips, Valley, Daniels, Sheridan, Roosevelt, Richland, McCone, Garfield, Petroleum, Fergus, Judith Basin, Cascade, Chouteau, Teton, and Pondera; and

(d) District 4: Wheatland, Golden Valley, Musselshell, Treasure, Rosebud, Custer, Prairie, Dawson, Wibaux, Fallon, Carter, Powder River, Big Horn, Yellowstone, Carbon, Stillwater, and Sweet Grass.

History: En. Sec. 2, Ch. 21, L. 1973; R.C.M. 1947, 43-109; amd. Sec. 9, Ch. 52, L. 1993.

5-1-103. Vacancy on commission. (1) In the event a vacancy occurs on the commission, the appointing authority of the vacated seat shall designate a successor.

(2) In the event the appointing authority at the time a vacancy occurs is of the opposite political party than that of the appointing authority that made the appointment that is vacant, the majority or minority leader of the same political party as the appointing authority that made the original appointment of the commissioner whose position is vacated shall designate the successor.

History: En. Sec. 3, Ch. 21, L. 1973; R.C.M. 1947, 43-110; amd. Sec. 1, Ch. 16, L. 1981.

5-1-104. Compensation and expenses. Commissioners are entitled to the same compensation and expenses as provided to members of the legislature in 5-2-302 while attending commission meetings or carrying out the official duties of the commission.

History: **En. Sec. 4, Ch. 21, L. 1973; amd. Sec. 18, Ch. 439, L. 1975; R.C.M. 1947, 43-111; amd. Sec. 1, Ch. 69, L. 1983.**

5-1-105. Restriction on commissioners seeking election to legislature. A member of the commission may not run for election to a legislative seat within 2 years after the districting and apportionment plan in which he participated becomes effective.

History: **En. Sec. 11, Ch. 21, L. 1973; R.C.M. 1947, 43-118.**

5-1-106. Legislative services division to provide technical and clerical services. The executive director of the legislative services division, under the direction of the commission, shall provide the technical staff and clerical services that the commission needs to prepare its districting and apportionment plans.

History: **En. Sec. 5, Ch. 21, L. 1973; R.C.M. 1947, 43-112; amd. Sec. 2, Ch. 477, L. 1983; amd. Sec. 13, Ch. 545, L. 1995.**

Cross-References

Legislative Services Division, 5-11-111, 5-11-112.

5-1-107. Assistance of state agencies. Upon request state agencies shall cooperate with the commission and furnish technical assistance and consulting personnel.

History: **En. Sec. 6, Ch. 21, L. 1973; R.C.M. 1947, 43-113.**

5-1-108. Public hearing on plans. (1) Before the commission files its final congressional redistricting plan with the secretary of state, the commission shall hold at least one public hearing on it.

(2) Before the commission submits its legislative redistricting plan to the legislature, it shall hold at least one public hearing on the plan at the state capitol.

(3) The commission may hold other hearings as it deems necessary.

History: **En. Sec. 7, Ch. 21, L. 1973; R.C.M. 1947, 43-114; amd. Sec. 3, Ch. 477, L. 1983.**

5-1-109. Submission of plan for legislative redistricting to legislature. The commission shall submit its legislative redistricting plan to the legislature by the 10th legislative day of the first regular session after its appointment or after the census figures are available.

History: **En. Sec. 8, Ch. 21, L. 1973; R.C.M. 1947, 43-115; amd. Sec. 4, Ch. 477, L. 1983.**

Cross-References

Legislative sessions, 5-2-103.

5-1-110. Recommendations of legislature. Within 30 days after the commission submits its legislative redistricting plan to the legislature, the legislature shall return the plan to the commission with its recommendations.

History: **En. Sec. 9, Ch. 21, L. 1973; R.C.M. 1947, 43-116; amd. Sec. 5, Ch. 477, L. 1983.**

5-1-111. Final plan — dissolution of commission. (1) Within 90 days after the official final decennial census figures are available, the commission shall file its final plan for congressional districts with the secretary of state and it shall become law.

(2) Within 30 days after receiving the legislative redistricting plan and the legislature's recommendations, the commission shall file its final legislative redistricting plan with the secretary of state and it shall become law.

(3) Upon filing both plans, the commission shall be dissolved.

History: En. Sec. 10, Ch. 21, L. 1973; R.C.M. 1947, 43-117; amd. Sec. 6, Ch. 477, L. 1983.

CHAPTER 2

LEGISLATURE — COMPOSITION AND ORGANIZATION

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5-2-101. Composition of legislature.
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5-2-401. Definitions.
5-2-402. Appointment by board of county commissioners.
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Part 5 — Legislative Branch Consolidation

5-2-501. Declaration of policy and purpose.
5-2-502. Structure of legislative branch.
5-2-503. Consolidation of legislative branch entities for specified purposes.
5-2-504. Legislative branch consolidated.

Chapter Cross-References

Separation of powers, Art. III, sec. 1, Mont. Const.

Continuity of government, Art. III, sec. 2, Mont. Const.

Elections, Art. IV, sec. 3, Mont. Const.

Immunity from suit for legislative acts and omissions, Art. V. sec. 8, Mont. Const.; 2-9-111.

Code of ethics, Art. XIII, sec. 4, Mont. Const.

Standards of conduct, Title 2, ch. 2.

Elections, Title 13.

Filing fees, 13-10-202.

Bribing members of political gatherings, 13-35-220.

Limitations on campaign contributions, 13-37-216 through 13-37-218.

Surplus campaign funds, 13-37-240.

Part 1
General

Part Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.; 2-16-211; 2-16-212.

Eligibility for public office, Art. IV, sec. 4, Mont. Const.

Power and structure of Legislature, Art. V, sec. 1, Mont. Const.

Size of Legislature, Art. V, sec. 2, Mont. Const.

Election and terms of legislators, Art. V, sec. 3, Mont. Const.

Qualifications of legislators, Art. V, sec. 4, Mont. Const.

Sessions of Legislature, Art. V, sec. 6, Mont. Const.

Immunity from suit for legislative acts or omissions, Art. V, sec. 8, Mont. Const.; 2-9-111.

Disqualification of legislator, Art. V, sec. 9, Mont. Const.

Standards of conduct, Title 2, ch. 2.

Absence of officer from state — consent of Legislature, 2-16-112.

Replacement of legislator who enters military service, 10-2-227.

5-2-101. Composition of legislature. The legislature consists of senators and representatives elected from the several senatorial and representative districts of the state in the number specified by law.

History: En. Sec. 150, Pol. C. 1895; re-en. Sec. 50, Rev. C. 1907; amd. Sec. 1, Ch. 5, L. 1921; re-en. Sec. 51, R.C.M. 1921; re-en. Sec. 51, R.C.M. 1935; R.C.M. 1947, 43-201.

Cross-References

Size of Legislature, Art. V, sec. 2, Mont. Const.

Districting and Apportionment Commission, Art. V. sec. 14, Mont. Const.; Title 5, ch. 1, part 1.

Redistricting and reapportionment plans — number of legislators, 5-1-101.

5-2-102. Term of office. The term of office of a senator is 4 years or until his successor is elected and qualified and of a representative 2 years or until his successor is elected and qualified. The term of service shall begin on the first Monday of January next succeeding his election. If a senator is elected to fill a vacancy, his term of service shall begin on the next day after his election.

History: En. Sec. 151, Pol. C. 1895; re-en. Sec. 51, Rev. C. 1907; amd. Sec. 1, Ch. 17, L. 1909; re-en. Sec. 52, R.C.M. 1921; Cal. Pol. C. Sec. 226; re-en. Sec. 52, R.C.M. 1935; amd. Sec. 1, Ch. 193, L. 1975; amd. Sec. 1, Ch. 198, L. 1977; R.C.M. 1947, 43-202.

Cross-References

Election and terms, Art. V, sec. 3, Mont. Const.

Elections to fill vacancies in Senate, 5-2-406.

Elections, Title 13.

5-2-103. Time and place of meeting. Each regular session of the legislature shall be convened at the seat of government at 12 noon on the first Monday of January of each odd-numbered year or, if January 1 is a Monday, on the first Wednesday. The legislature shall meet at other times when convened by the governor or by the written request of a majority of the legislators or, when the legislature is in session, by a recorded vote of a majority of the legislators.

History: En. Sec. 160, Pol C. 1895; re-en. Sec. 55, Rev. C. 1907; re-en. Sec. 55, R.C.M. 1921; Cal. Pol. C. Sec. 235; re-en. Sec. 55, R.C.M. 1935; amd. Sec. 1, Ch. 279, L. 1973; amd. Sec. 5, Ch. 309, L. 1977; R.C.M. 1947, 43-205.

Cross-References

Sessions, Art. V, sec. 6, Mont. Const.

Special sessions, Title 5, ch. 3.

Call of special session by written request, 5-3-102.

5-2-104. Appointment to or candidacy for other offices. (1) No member of the legislature may, during the term for which he was elected, be appointed to any civil office under the state. A member of the legislature may become a candidate for public office during his term.

(2) A member of the legislature who is elected to other public office shall resign from the legislature prior to assuming the office to which he was newly elected.

History: En. 43-202.2 and 43-202.3 by Secs. 2, 3, Ch. 91, L. 1977; R.C.M. 1947, 43-202.2, 43-202.3.

Cross-References

No appointment of legislator to civil office, Art. V, sec. 9, Mont. Const.

Public officers, Title 2, ch. 16.

5-2-105. Facsimile signatures authorized. (1) As used in this section, "facsimile signature" means a reproduction of the manual signature of a legislator by engraving, imprinting, stamping, facsimile transmission, or other means.

(2) On state documents requiring a signature, a legislator may use a facsimile signature in lieu of his manual signature. Before using a facsimile signature, the legislator shall file a copy of his manual or facsimile signature, certified by him under oath, with the presiding officer of the house of which he is a member.

History: En. Sec. 1, Ch. 318, L. 1989; amd. Sec. 1, Ch. 685, L. 1991.

Part 2
Organization

Part Cross-References

Organization and procedure of Legislature, Art. V, sec. 10, Mont. Const.

5-2-201. Presession caucus. Not later than December 1 of each year following an election when members of the legislature are elected, the parties of each house of the legislature shall hold a presession caucus for holdover senators, senators-elect, and representatives-elect. The purpose of the caucus of each party of each house is to nominate officers and establish the basis for additional presession activity, including hiring staff and appointing committees.

History: En. Sec. 2, Ch. 274, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 1, Ch. 392, L. 1975; amd. Sec. 19, Ch. 439, L. 1975; amd. Sec. 1, Ch. 103, L. 1977; R.C.M. 1947, 43-218(1); amd. Sec. 1, Ch. 385, L. 1987; amd. Sec. 1, Ch. 412, L. 1987.

Cross-References

Canvassing, Title 13, ch. 15.

5-2-202. Presession activity. (1) Members of the legislature nominated to leadership positions during the presession caucus and members nominated or appointed to the legislative administration committees, committee on committees, and rules committees may meet and perform necessary organizational tasks prior to the session, including but not limited to appointing committees, hiring staff, and assigning space and seating.

(2) Members of the house appropriations committee and of the senate finance and claims committee named prior to the session may begin reviewing requests for appropriations immediately and may visit state agencies and institutions to discuss requests.

History: En. 43-218.1 by Sec. 2, Ch. 103, L. 1977; R.C.M. 1947, 43-218.1(1); amd. Sec. 1, Ch. 551, L. 1979; amd. Sec. 2, Ch. 412, L. 1987.

5-2-203. Compensation and expenses. (1) Members of the legislature attending the presession caucus are entitled to receive compensation and expenses as provided in 5-2-302.

(2) While engaged in presession business, members nominated to serve as officers of the legislature and members of the committees named in 5-2-202 are entitled to receive compensation and expenses as provided in 5-2-302.

History: (1)En. Sec. 2, Ch. 274, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 1, Ch. 392, L. 1975; amd. Sec. 19, Ch. 439, L. 1975; amd. Sec. 1, Ch. 103, L. 1977; Sec. 43-218, R.C.M. 1947; (2)En. 43-218.1 by Sec. 2, Ch. 103, L. 1977; Sec. 43-218.1, R.C.M. 1947; R.C.M. 1947, 43-218(2), 43-218.1(2); amd. Sec. 2, Ch. 551, L. 1979; amd. Sec. 3, Ch. 412, L. 1987.

5-2-204 through 5-2-210 reserved.

5-2-211. Certified rosters. The secretary of state shall prepare certified rosters from the official election records on file in his office for use in the organization of the senate and house of representatives.

History: En. Sec. 1, Ch. 18, L. 1969; R.C.M. 1947, 43-206.1.

5-2-212. Organization of senate. At 12 noon on the day appointed for the meeting of any regular session of the legislature, the senior member present must take the chair, call the senators and senators-elect to order, call over the senators from the certified roster prepared by the secretary of state, and then, from the certified roster prepared by the secretary of state, call over the senatorial districts and counties, in their order, from which members have been elected at the preceding election. After the same are called the members-elect must take the constitutional oath of office and assume their seats. The senate may thereupon, if a quorum is present, proceed to elect its officers.

History: En. H.B. No. 69, p. 103, L. 1897; re-en. Sec. 163, Pol. C. 1895; re-en. Sec. 57, Rev. C. 1907; re-en. Sec. 57, R.C.M. 1921; Cal. Pol. C. Sec. 238; re-en. Sec. 57, R.C.M. 1935; amd. Sec. 2, Ch. 18, L. 1969; R.C.M. 1947, 43-207; amd. Sec. 17, Ch. 575, L. 1981.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.;
2-16-211; 2-16-212.

5-2-213. Organization of house of representatives. At the time specified in 5-2-212, the secretary of state, or in case of his absence or inability then the senior member-elect present, must take the chair, call the members-elect of the house of representatives to order, and then, from the certified roster prepared by the secretary of state, call over the roll of counties and districts. After the same are called the members-elect must take the constitutional oath of office and assume their seats. The house of representatives may thereupon, if a quorum is present, proceed to elect its officers.

History: En. Sec. 164, Pol. C. 1895; re-en. Sec. 58, Rev. C. 1907; re-en. Sec. 58, R.C.M. 1921; Cal. Pol. C. Sec. 239; re-en. Sec. 58, R.C.M. 1935; amd. Sec. 3, Ch. 18, L. 1969; R.C.M. 1947, 43-208.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.; 2-16-211; 2-16-212.

5-2-214. Oath to be entered on journals. An entry of the oath taken by the members of the legislature must be made on the journals of the proper houses, respectively.

History: En. Sec. 165, Pol. C. 1895; re-en. Sec. 59, Rev. C. 1907; re-en. Sec. 59, R.C.M. 1921; Cal. Pol. C. Sec. 240; re-en. Sec. 59, R.C.M. 1935; R.C.M. 1947, 43-209.

Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.; 2-16-211; 2-16-212.

5-2-215. Election of officers. In all elections of officers of either branch of the legislature, a majority of all the votes given is necessary to a choice.

History: En. Sec. 8, p. 90, L. 1885; re-en. Sec. 1332, 5th Div. Comp. Stat. 1887; re-en. Sec. 166, Pol. C. 1895; re-en. Sec. 60, Rev. C. 1907; re-en. Sec. 60, R.C.M. 1921; re-en. Sec. 60, R.C.M. 1935; R.C.M. 1947, 43-210.

5-2-216. Tie vote. In the event there is a tie vote for the purposes of organizing the senate or the house of representatives then, for the purposes of organization, the political party's candidate for president of the senate or speaker of the house then having a member of his party as the governor of Montana shall be deemed to be elected.

History: En. Sec. 1, Ch. 25, L. 1973; R.C.M. 1947, 43-210.1.

5-2-217 through 5-2-220 reserved.

5-2-221. Officers and employees of the senate and house of representatives. (1) The officers of the senate include a president, a president pro tempore, a majority floor leader, a minority floor leader, a majority whip, and a minority whip.

(2) The officers of the house of representatives include a speaker, a speaker pro tempore, a majority floor leader, a minority floor leader, a majority whip, and a minority whip.

(3) The president and president pro tempore of the senate and the speaker and speaker pro tempore of the house shall be elected by the house of which they are a member.

(4) The majority floor leader, minority floor leader, majority whip, and minority whip of the senate and house shall be elected by their respective caucuses.

(5) A secretary of the senate, sergeant-at-arms, and chaplain shall be appointed by the president subject to confirmation by the senate, and a chief clerk of the house, sergeant-at-arms, and chaplain shall be appointed by the speaker subject to confirmation by the house.

History: En. 43-214.1 by Sec. 1, Ch. 186, L. 1974; amd. Sec. 1, Ch. 88, L. 1977; R.C.M. 1947, 43-214.1; amd. Sec. 1, Ch. 17, L. 1981.

Cross-References

Gubernatorial succession, 2-16-511 through 2-16-514.

Governor and Lieutenant Governor incapacitated, 2-16-515.

Discrimination in hiring legislative leadership staff, 49-2-308.

5-2-222. Powers and duties of officers. The president and president pro tempore of the senate and the speaker and speaker pro tempore of the house of representatives may administer the oath of office to any senator or representative and to the officers and employees of their respective bodies. The officers and employees must perform such duties as are required by the rules or orders of the respective bodies which elect them.

History: En. Secs. 4 and 5, p. 170, L. 1891; re-en. Sec. 200, Pol. C. 1895; re-en. Sec. 67, Rev. C. 1907; re-en. Sec. 65, R.C.M. 1921; Cal. Pol. C. Sec. 252; re-en. Sec. 65, R.C.M. 1935; R.C.M. 1947, 43-301(part).

Part 3

Compensation and Expenses of Members and Officers

Part Cross-References

Compensation of legislators, Art. V, sec. 5, Mont. Const.

Exemption of elected officials from state employee classification, 2-18-103.

Travel, meals, and lodging, Title 2, ch. 18, part 5.

Group insurance for public officers, 2-18-702.

State group insurance, Title 2, ch. 18, part 8.

Social Security, Title 19, ch. 1.

Public employees' retirement system, Title 19, ch. 3.

Deferred compensation, Title 19, ch. 50.

5-2-301. Compensation and expenses for members while in session. (1) Except as provided in subsection (8), legislators are entitled to a salary commensurate to that of the daily rate of an entry grade 8 classified state employee in effect when the regular session of the legislature in which they serve is convened under 5-2-103 for those days during which the legislature is in session. The president of the senate and the speaker of the house shall receive an additional $5 a day in salary for those days during which the legislature is in session.

(2) Legislators may serve for no salary.

(3) Subject to subsection (4), legislators are entitled to a daily allowance, 7 days a week, during a legislative session, as reimbursement for expenses incurred in attending a session. Expense payments must stop when the legislature recesses for more than 3 days and resume when the legislature reconvenes.

(4) After November 15, and prior to December 15 of each even-numbered year, the department of administration shall conduct a survey of the allowance for daily expenses of legislators for the states of North Dakota, South Dakota, Wyoming, and Idaho. The department shall include the average daily expense allowance for Montana legislators in determining the average daily rate for legislators. The department shall include only states with specific daily allowances in the calculation of the average. If the average daily rate is greater than the daily rate for legislators in Montana, the average is the new daily rate for legislators for those days during which the legislature is in session. The expense allowance is effective when the next regular session of the legislature in which the legislators serve is convened under 5-2-103.

(5) Legislators are entitled to a mileage allowance as provided in 2-18-503 for each mile of travel to the place of the holding of the session and to return to their place of residence at the conclusion of the session.

(6) In addition to the mileage allowance provided for in subsection (5), legislators, upon submittal of an appropriate claim for mileage reimbursement to the legislative services division, are entitled to:

(a) three additional round trips to their place of residence during each regular session; and

(b) additional round trips as authorized by the legislature during special session.

(7) Legislators are not entitled to any additional mileage allowance under subsection (5) for a special session if it is convened within 7 days of a regular session.

(8) In lieu of the salary provided for in subsection (1) and the expense allowance provided for in subsection (4), a legislator may receive remuneration for services performed during a legislative session. A legislator choosing to receive remuneration for services performed shall file a request to receive payment under this subsection with the legislative services division. A legislator exercising the option to receive remuneration for services performed may not receive more remuneration than legislators paid pursuant to subsections (1) and (4). Remuneration for services performed must be reduced by an amount a day equal to the daily expense allowance for a legislator established under this section when the legislature recesses for more than 3 days.

History: En. Sec. 220, Pol. C. 1895; re-en. Sec. 77, Rev. C. 1907; amd. Sec. 1, Ch. 45, L. 1909; re-en. Sec. 74, R.C.M. 1921; Cal. Pol. C. Sec. 266; re-en. Sec. 74, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1955; amd. Sec. 1, Ch. 32, L. 1963; amd. Sec. 1, Ch. 180, L. 1965; amd. Sec. 1, Ch. 274, L. 1969; amd. Sec. 1, Ch. 4, L. 1971; amd. Sec. 1, Ch. 72, L. 1973; amd. Sec. 1, Ch. 5, L. 1975; amd. Sec. 2, Ch. 392, L. 1975; amd. Sec. 20, Ch. 439, L. 1975; amd. Sec. 3, Ch. 103, L. 1977; R.C.M. 1947, 43-310; amd. Sec. 2, Ch. 650, L. 1979; amd. Sec. 1, Ch. 7, L. 1981; amd. Sec. 1, Ch. 144, L. 1981; amd. Sec. 3, Ch. 605, L. 1981; amd. Sec. 1, Ch. 8, L. 1985; amd. Sec. 3, Ch. 693, L. 1985; amd. Sec. 1, Ch. 9, Sp. L. June 1986; amd. Sec. 1, Ch. 1, L. 1989; amd. Sec. 13, Ch. 720, L. 1991; amd. Sec. 15, Ch. 455, L. 1995; amd. Sec. 14, Ch. 545, L. 1995; amd. Sec. 15, Ch. 417, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 417 in (3), near beginning, substituted "a daily allowance" for "$50 a day"; in (4), in first sentence after "November 15", deleted "1996, and prior to December 15, 1996" and inserted third sentence providing "The department shall include only states with specific daily allowances in the calculation of the average"; in (8), in fourth sentence, substituted "reduced by an amount a day equal to the daily expense allowance for a legislator established under this section" for "reduced $50 a day"; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Pay schedule for classified state employee, 2-18-312.

Regular session — time and place of meeting, 5-2-103.

5-2-302. Compensation and expenses when legislature not in session. When the legislature is not in session, a member of the legislature, while engaged in legislative business with prior authorization of the appropriate funding authority, is entitled to:

(1) a mileage allowance as provided in 2-18-503;

(2) expenses as provided in 2-18-501 and 2-18-502; and

(3) a salary equal to one full day's pay at the rate of a classified state employee, described in 5-2-301(1) for each 24-hour period of time (from

midnight to midnight), or portion thereof, spent away from home on authorized legislative business. However, if time spent for business other than authorized legislative business results in lengthening a legislator's stay away from home into an additional 24-hour period, he may not be compensated for the additional day.

History: En. Sec. 1, Ch. 224, L. 1973; amd. Sec. 4, Ch. 103, L. 1977; R.C.M. 1947, 43-310.1; amd. Sec. 1, Ch. 1, L. 1981; amd. Sec. 2, Ch. 8, L. 1985; amd. Sec. 2, Ch. 1, L. 1989.

Cross-References

Administrative Code Committee — staff, meetings, and compensation, 2-4-401.

Pay schedule for classified state employee, 2-18-312.

Compensation of legislators — presession caucus and presession business, 5-2-203.

Compensation of Legislative Finance Committee members, 5-12-203.

Compensation of Legislative Audit Committee members, 5-13-203.

Compensation of Committee on Indian Affairs members, 5-19-106.

Compensation of Committee on Public Employee Retirement Systems members, 5-21-103.

Compensation of Legislative Consumer Committee members, 69-1-212.

Compensation of Environmental Quality Council members, 75-1-302.

5-2-303. Participation in state benefits group — employer contribution made to other plan. (1) Individual members of the senate and the house of representatives may enroll in the state employees benefits group during the terms to which they have been elected. The provider of benefits shall enroll and collect employee contributions directly from such legislators. The employer contribution shall be paid from funds appropriated for that purpose.

(2) (a) If a member does not enroll or terminates enrollment under the state employees benefits group plan and is insured under a plan providing disability insurance as defined in 33-1-207, the department of administration, upon request of the member, shall pay to the member's insurer an amount equal to the premium required to be paid by the member for coverage of the member and any dependents under the disability insurance plan, subject to the limitation contained in subsection (2)(b).

(b) A payment made under subsection (2)(a) may not exceed the amount of the employer contribution for group benefits for members of the legislature as provided for in 2-18-703.

History: En. 43-310.3 by Sec. 12, Ch. 563, L. 1977; R.C.M. 1947, 43-310.3; amd. Sec. 12, Ch. 555, L. 1979; amd. Sec. 1, Ch. 229, L. 1987.

Cross-References

Contribution to group insurance plan, 2-18-702, 2-18-703.

State group insurance, Title 2, ch. 18, part 8.

Public employees' retirement system, Title 19, ch. 3.

5-2-304. Continued participation in public retirement systems. (1) The purpose of this section is to provide a means whereby persons serving in the Montana legislature may continue their participation in public retirement systems governed by state law. This section is not intended to provide duplicate credit for the same service in two retirement systems supported wholly or in part by public funds. This section does not affect contribution rates or benefit payments specifically provided for in the laws governing the operation of individual retirement systems.

(2) A person who is engaged in official duties as a member of the Montana legislature and who is otherwise eligible to participate as a member or

contributor of a public retirement system governed by state law may but is not required to continue his participation in such public retirement system while engaged in his official duties as a legislator.

(3) A legislator who elects to continue participation as provided in subsection (2) shall:

(a) continue his payments into the fund of the retirement system at the rate currently in effect in such system based on his monthly salary as a member of that system; or

(b) continue his payments into the fund of the retirement system at the rate currently in effect in such system based on his monthly salary as a legislator.

(4) The state contribution shall be by legislative appropriation. It shall equal the appropriate employer contribution at the rate currently in effect in the system.

History: En. 43-310.2 by Sec. 1, Ch. 333, L. 1977; R.C.M. 1947, 43-310.2.

Cross-References

Public retirement systems, Title 19, ch. 1 through 9, 13, 17 through 20.

Part 4
Vacancies

Part Cross-References

Vacancy in Legislature, Art. V, sec. 7, Mont. Const.

Vacancy and succession, Title 2, ch. 16, part 5.

Montana Recall Act, Title 2, ch. 16, part 6.

Replacement of legislator who enters military service, 10-2-227.

Vacancy prior to primary election, 13-10-326.

Vacancy after primary and prior to general election, 13-10-327.

Vacancies among nominees after nomination and before general election, 13-14-118.

5-2-401. Definitions. (1) As used in 5-2-406, "term" means the 4-year period to which a senator is normally elected in the absence of a vacancy.

(2) For the purposes of this part, "vacancy" or "vacancies" has the same meaning as prescribed in 2-16-501.

History: (1)En. Sec. 3, Ch. 179, L. 1967; Sec. 43-217, R.C.M. 1947; (2)En. Sec. 1, Ch. 179, L. 1967; amd. Sec. 2, Ch. 198, L. 1977; Sec. 43-215, R.C.M. 1947; R.C.M. 1947, 43-215(4)(a), 43-217.

5-2-402. Appointment by board of county commissioners. (1) When a vacancy occurs in the legislature, the vacancy shall be filled by appointment by the board of county commissioners or, in the event of a multicounty district, the boards of county commissioners comprising the district sitting as one appointing board.

(2) Whenever boards of county commissioners sit as one appointing board, selection of an individual to fill the vacancy must be as follows:

(a) The chairman of the board of county commissioners of the county in which the person resided whose vacancy is to be filled shall call a meeting for the purpose of appointing the member of the legislature, and he shall act as the presiding officer of the meeting.

(b) Each commissioner's vote is determined by the following formula: 100 multiplied by (A divided by B) multiplied by (1 divided by C), where A is the total votes cast in the respective county for the person vacating the legislative seat or, if such person was not himself elected, the votes cast for the last person to be elected for the current term, B is the total votes cast for that person in the legislative district, and C is the number of authorized commissioners on the board of the commissioner whose vote is being determined. If a vacancy occurs in a holdover senate seat after holdover senators have been assigned to new districts under each reapportionment, the formula must be applied using the votes cast for the senatorial candidates at the last election in which such votes were cast. Such votes shall include only those cast by electors residing in the new senate district for senate candidates of the party to which the person vacating the seat belonged. The secretary of state shall provide an estimate of the number of votes so cast, by county or portion thereof.

(c) The person selected to fill the vacancy is the one who receives the highest number above 50 that results from the calculation required by this subsection (2). If no candidate receives a number higher than 50 from that calculation, the selection board shall cast its votes again in the same manner for the persons receiving the two highest numbers.

(3) The appointment of a legislator under this section must take place within 15 days after the vacancy occurs.

History: En. Sec. 1, Ch. 179, L. 1967; amd. Sec. 2, Ch. 198, L. 1977; R.C.M. 1947, 43-215(1), (2), (6); amd. Sec. 1, Ch. 493, L. 1983.

Cross-References

County Commissioners, Title 7, ch. 4, part 21.

5-2-403. Appointee to be of same political party. (1) Whenever his predecessor served as a member of a political party, the appointee named under 5-2-402 shall be a member of the same political party and shall be selected from a list of three individuals provided by the county central committees, acting together, of the counties wherein a portion of the senate district lies. Whenever the appointing board is unable to elect an appointee from the submitted list, it shall request a second list of three names from the county central committees. The second list may not contain any of the names submitted on the first list. The appointing board shall then select an appointee from the individuals named on both lists.

(2) The provisions of this section do not apply if his predecessor served as an independent.

History: En. Sec. 1, Ch. 179, L. 1967; amd. Sec. 2, Ch. 198, L. 1977; R.C.M. 1947, 43-215(5).

Cross-References

Political parties generally, Title 13, ch. 38.

County central committees, 13-38-202.

5-2-404. Procedure upon failure of one candidate to receive majority vote. In the event that a decision cannot be made by the appointing board because of failure of any candidate to receive a majority of the votes, the final decision may be made by lot from the first and second lists of candidates as provided by 5-2-403(1) or from a list of three individuals if the predecessor served as an independent, in accordance with rules of selection adopted by the appointing board.

History: En. Sec. 2, Ch. 179, L. 1967; amd. Sec. 3, Ch. 198, L. 1977; R.C.M. 1947, 43-216.

5-2-405. Term of appointee. (1) Whenever the vacancy occurs in the house of representatives, the appointee shall serve until the end of the term to which his predecessor was elected.

(2) Whenever the vacancy occurs in the senate, the appointee shall serve until a successor can be elected as provided in 5-2-406.

History: En. Sec. 1, Ch. 179, L. 1967; amd. Sec. 2, Ch. 198, L. 1977; R.C.M. 1947, 43-215(3).

5-2-406. Elections to fill vacancies in senate. (1) Whenever a vacancy occurs 85 days or more before the general election held during the second year of the term, an individual shall be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 75 days or more prior to the primary election during the second year, the same procedure as is used for senators who will be elected to full 4-year terms at that general election shall be utilized.

(b) Whenever the vacancy occurs on or after the 75th day prior to the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-10-327 and 13-38-204. A political party shall notify the secretary of state of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate shall be filed with the secretary of state on or before the 85th day prior to the general election.

(2) Whenever a vacancy occurs on or after the 85th day prior to the general election held during the second year of the term, the person appointed by the board under 5-2-402 shall serve until the end of the term.

History: En. Sec. 1, Ch. 179, L. 1967; amd. Sec. 2, Ch. 198, L. 1977; R.C.M. 1947, 43-215(4)(b), (4)(c); amd. Sec. 1, Ch. 526, L. 1979; amd. Sec. 1, Ch. 250, L. 1985; amd. Sec. 1, Ch. 229, L. 1989.

Cross-References

Term of office, 5-2-102.

Times for holding general elections, 13-1-104.

Times for holding primary elections, 13-1-107.

5-2-407. Anticipated vacancy. (1) Whenever it appears that a vacancy will exist in the legislature because of the inability of an elected legislator to take office at the commencement of the term to which he was elected, an appointee may be selected in advance of the commencement of the term under the provisions of 5-2-402 through 5-2-406.

(2) For purposes of determining the term of office of the appointee and the 15-day period of 5-2-402(3), the vacancy occurs on the first day of the term to which his predecessor was elected.

(3) An appointee under this section may take office only if the vacancy in fact exists at the commencement of the term of office.

History: En. 43-216.1 by Sec. 4, Ch. 198, L. 1977; R.C.M. 1947, 43-216.1.

Cross-References

Vacancy and succession — executive office, Title 2, ch. 16, part 5.

Judicial Nomination Commission — judicial vacancy, Title 3, ch. 1, part 10.

Part 5
Legislative Branch Consolidation

5-2-501. Declaration of policy and purpose. It is the public policy of this state and the purpose of this part:

(1) to create a structure of the legislative branch of state government that is efficient and responsive to the needs of the people of this state and is sufficiently flexible to meet changing conditions;

(2) to strengthen the legislative branch capacity to administer its affairs effectively and efficiently on behalf of the people of the state;

(3) to provide means for coordination of branch activities; and

(4) to eliminate unnecessary overlapping and duplication of effort within the legislative branch of state government.

History: En. Sec. 1, Ch. 545, L. 1995.

5-2-502. Structure of legislative branch. The legislature established in Article V, section 1, of the Montana constitution and the committees established by law constitute the legislative branch. The functional organization of the legislative branch is governed by the joint rules of the legislature and the laws governing the several components of the branch. The administrative organization of the legislative branch is consolidated as provided in this part.

History: En. Sec. 2, Ch. 545, L. 1995.

5-2-503. Consolidation of legislative branch entities for specified purposes. (1) An entity of the legislative branch that is consolidated with the legislative council as provided in 5-2-504 shall:

(a) exercise its substantive functions independently as provided by law;

(b) adhere to administrative policies, including personnel policies, adopted by the legislative council;

(c) submit its budget proposals through the legislative council; and

(d) submit reports required of it as provided in 5-11-210.

(2) The legislative council shall:

(a) coordinate budgeting, recordkeeping, reporting, and related administrative and clerical functions as a consolidated entity, including acknowledgment of actions by the approving authority of the consolidated entity;

(b) include within the legislative council budget the budget proposals for the legislature and the consolidated entities, separately identified;

(c) provide separate identification for appropriations and expenditures for the legislature and for each of the consolidated entities;

(d) establish procedures for approval of expenditures by the legislature and by each of the consolidated entities; and

(e) provide personnel administration for the legislative branch. The senate and the house of representatives or a consolidated entity with statutory hiring authority may hire its own personnel, subject to administrative procedures established by the legislature and legislative council.

(3) The legislative council shall allocate office space occupied by the egislative branch for the use of a consolidated entity as necessary. Space occupied by the senate or the house of representatives may not be reallocated

except as provided in 2-17-108. The location of the chambers of the house of representatives and the senate must be determined as provided by 2-17-101.

History: En. Sec. 3, Ch. 545, L. 1995; amd. Sec. 4, Ch. 20, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 20 in (3), in second sentence after "except", substituted "as provided in 2-17-108" for "upon approval of the respective house as provided in the rules of that house". Amendment effective February 12, 1997.

5-2-504. Legislative branch consolidated. The following legislative branch entities are consolidated, as provided in 5-2-503 and this section, with the legislative council established by 5-11-101:

(1) the senate and the house of representatives provided for in Article V, section 1, of the Montana constitution;

(2) the legislative services division established by 5-11-111;

(3) the legislative finance committee established by 5-12-201;

(4) the legislative fiscal division established by 5-12-301;

(5) the legislative audit committee established by 5-13-201;

(6) the legislative audit division established by 5-13-301;

(7) the administrative code committee established by Title 5, chapter 14, part 1;

(8) the environmental quality council established by 5-16-101;

(9) the revenue oversight committee established by 5-18-102; and

(10) the committee on Indian affairs established by 5-19-102.

History: En. Sec. 4, Ch. 545, L. 1995; amd. Sec. 17, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in introduction, after "consolidated", deleted "with the legislative council" and after "this section" inserted "with the legislative council established by 5-11-101"; deleted former (2) that read: "(2) the legislative council established by 5-11-101"; and made minor changes in style. Amendment effective March 12, 1997.

CHAPTER 3

SPECIAL SESSIONS

Part 1 — Call of Special Session

5-3-101. Convening of special session — limiting subjects.
5-3-102. Calling of a future special session when legislature is in session.
5-3-103 and 5-3-104 reserved.
5-3-105. Request by ten members to poll legislators.
5-3-106. Procedure for polling legislators.
5-3-107. Notice of time of approved special session.
5-3-108. Failure to approve special session — ballots void.

Chapter Cross-References

Sessions of Legislature, Art. V, sec. 6, Mont. Const.

Special sessions convened by Governor, Art. VI, sec. 11, Mont. Const.

Special session called to fill vacancy in elective office, 2-16-504.

Emergency session — gubernatorial succession, 2-16-513.

Time and place of legislative session, 5-2-103.

Emergency order convening special session, 10-3-505.

Part 1
Call of Special Session

5-3-101. Convening of special session — limiting subjects. The legislature may be convened in special session by the governor or at the written request of a majority of the members. The governor or the legislature may limit the special session to the subjects specified in the call.

History: En. Sec. 1, Ch. 433, L. 1973; R.C.M. 1947, 43-319.

5-3-102. Calling of a future special session when legislature is in session. When the legislature is in session, a majority of the members may by a written request call a special session to meet at a specified time.

History: En. Sec. 2, Ch. 433, L. 1973; R.C.M. 1947, 43-320.

Cross-References

Call of special session by recorded vote, 5-2-103.

5-3-103 and 5-3-104 reserved.

5-3-105. Request by ten members to poll legislators. (1) When the legislature is not in session, any 10 members may in writing request the secretary of state to poll the legislators to determine if a majority are in favor of a special session.

(2) The request must state:

(a) the conditions warranting the call of a special session;

(b) the purposes of the special session; and

(c) the proposed convening date and time of the special session.

History: En. Sec. 3, Ch. 433, L. 1973; R.C.M. 1947, 43-321.

5-3-106. Procedure for polling legislators. (1) Within 5 days after receiving a request, the secretary of state shall send to all legislators by certified mail a ballot which contains:

(a) the names of the legislators making the request;

(b) the reasons for calling the special session;

(c) the purposes of the special session;

(d) the requested convening date and time of the special session;

(e) the date by which legislators must return the ballot, which may not be more than 30 days after the date of the mailing of the ballots; and

(f) a stamped return envelope.

(2) The secretary of state shall keep the ballots secret until all legislators have voted or until the day after the date set for return of the ballots, whichever occurs first.

History: En. Sec. 4, Ch. 433, L. 1973; amd. Sec. 1, Ch. 200, L. 1975; R.C.M. 1947, 43-322.

5-3-107. Notice of time of approved special session. If a majority of the legislators reply affirmatively to the poll, the secretary of state shall notify each legislator of the time and day on which the special session shall convene.

History: En. Sec. 6, Ch. 433, L. 1973; R.C.M. 1947, 43-324.

5-3-108. Failure to approve special session — ballots void. If a majority of the legislators fail to approve the call for a special session within 30 days after the secretary of state mails the ballots or notifies each legislator, all ballots are void and may not be used again. The entire process must be repeated to call the legislature into special session.

History: **En. Sec. 7, Ch. 433, L. 1973; R.C.M. 1947, 43-325.**

CHAPTER 4

BILLS

Part 1 — General Provisions

5-4-101. Form of enacting clause.
5-4-102. Limitation on title of referred legislation.
5-4-103. Rulemaking authority.

Part 2 — Fiscal Notes in Legislative Bills

5-4-201. Requirement of fiscal notes with committee reports.
5-4-202. Requests for notes by committee, house, or sponsor.
5-4-203. Budget director to prepare note.
5-4-204. Submission of fiscal note — sponsor's fiscal note — distribution to legislators.
5-4-205. Contents of notes.
5-4-206. Background information to legislators on request.
5-4-207. Repealed.
5-4-208 and 5-4-209 reserved.
5-4-210. Estimate of fiscal impact on local government required.

Part 3 — Action by Governor on Bills

5-4-301. Bills received by the governor — how endorsed.
5-4-302. Approval of bills.
5-4-303. Line item veto.
5-4-304. Amendatory veto.
5-4-305. Bills returned without approval.
5-4-306. Return when legislature not in session.
5-4-307. Bills remaining with governor.
5-4-308. Transmittal of veto messages to legislative services division.

Part 4 — Legislative History Act
(Repealed. Sec. 4, Ch. 11, L. 1997)

Chapter Cross-References

No bill of attainder, Art. II, sec. 30, Mont. Const.

Ex post facto, obligations of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.

Importation of armed persons, Art. II, sec. 33, Mont. Const.

Special consideration for service persons, Art. II, sec. 35, Mont. Const.

Continuity of government during periods of emergency, Art. III, sec. 2, Mont. Const.

Initiative, Art. III, sec. 4, Mont. Const.

Referendum, Art. III, sec. 5, Mont. Const.

Special election for initiative or referendum, Art. III, sec. 6, Mont. Const.

Gambling, Art. III, sec. 9, Mont. Const.

Election laws, Art. IV, sec. 3, Mont. Const.

Eligibility for public office, Art. IV, sec. 4, Mont. Const.

Bills — Art. V, sec. 11, Mont. Const.

Local and special legislation, Art. V, sec. 12, Mont. Const.

Governor to submit budget and messages, Art. VI, sec. 9, Mont. Const.

Judicial rules of procedure subject to disapproval by Legislature, Art. VII, sec. 2, Mont. Const.

Increase in number of Justices of Supreme Court, Art. VII, sec. 3, Mont. Const.

Providing for court review of administrative decisions, Art. VII, sec. 4, Mont. Const.

Increase in number of Justices of the Peace, Art. VII, sec. 5, Mont. Const.

Judicial districts, Art. VII, sec. 6, Mont. Const.

Judicial Standards Commission, Art. VII, sec. 11, Mont. Const.

Property tax exemptions created by Legislature, Art. VIII, sec. 5, Mont. Const.

Appropriation of highway revenue, Art. VIII, sec. 6, Mont. Const.

Tax appeals, Art. VIII, sec. 7, Mont. Const.

Creation of state debt, Art. VIII, sec. 8, Mont. Const.

Balanced budget, Art. VIII, sec. 9, Mont. Const.

Legislature to insure strict accountability of all revenue received, Art. VIII, sec. 12, Mont. Const.

Legislature to provide for public funds investment, Art. VIII, sec. 13, Mont. Const.

Prohibited payments, Art. VIII, sec. 14, Mont. Const.

Legislature to provide protection of environment and natural resources, Art. IX, sec. 1, Mont. Const.

Legislature to provide for reclamation, Art. IX, sec. 2, Mont. Const.

Legislature to provide for administration of water rights, Art. IX, sec. 3, Mont. Const.

Legislature to provide for cultural resources, Art. IX, sec. 4, Mont. Const.

Severance tax on coal — trust fund, Art. IX, sec. 5, Mont. Const.

Legislature to provide for public education, Art. X, sec. 1, Mont. Const.

Aid prohibited to sectarian schools, Art. X, sec. 6, Mont. Const.

Legislature to provide forms of local government, Art. XI, sec. 3, Mont. Const.

Legislature to provide procedure for local self-government, Art. XI, sec. 5, Mont. Const.

Initiative and referendum extended to local government units, Art. XI, sec. 8, Mont. Const.

Voter review of local government, Art. XI, sec. 9, Mont. Const.

Legislature to provide for Department of Agriculture, Art. XII, sec. 1, Mont. Const.

Legislature to provide for Department of Labor, Art. XII, sec. 2, Mont. Const.

Legislature may provide economic assistance and social and rehabilitative services, Art. XII, sec. 3, Mont. Const.

Nonmunicipal corporations, Art. XIII, sec. 1, Mont. Const.

Legislature to provide for Office of Consumer Counsel, Art. XIII, sec. 2, Mont. Const.

Code of ethics, Art. XIII, sec. 4, Mont. Const.; Title 2, ch. 2.

Homestead and exemption laws, Art. XIII, sec. 5, Mont. Const.

Statutory construction, Title 1, ch. 2.

Statutes imposing new local government duties, 1-2-112 through 1-2-114.

Effect of Legislature's actions, Title 1, ch. 2, part 2.

Duty of Secretary of State to receive bills during session, 2-15-401.

Initiative and referendum, Title 13, ch. 27.

Legislative action on budget bill, 17-7-131, 17-7-132.

Governor to report to Legislature need for supplemental appropriations bills, 17-7-301.

When rules imposing school district duties not effective until funded by Legislature, 20-2-115.

Statutory construction questions decided by courts, 26-1-201.

Declaratory judgment to obtain construction of statute, 27-8-202.

Part 1
General Provisions

5-4-101. Form of enacting clause. The enacting clause of every law shall be as follows: "Be it enacted by the Legislature of the State of Montana:".

History: En. Sec. 1, Ch. 7, L. 1974; R.C.M. 1947, 43-516.

5-4-102. Limitation on title of referred legislation. All bills referred by the legislature to a vote of the people shall have a title of no more than 100 words.

History: En. Sec. 17, Ch. 400, L. 1979.

Cross-References

Referendum, Title 13, ch. 27.

5-4-103. Rulemaking authority. A statute delegating rulemaking authority to an agency must contain specific guidelines describing for the agency and the public what the rules may and may not contain.

History: En. Sec. 2, Ch. 11, L. 1997.

Compiler's Comments

Effective Date: Section 5, Ch. 11, L. 1997, provided: "[This act] is effective on passage and approval." Approved February 7, 1997.

Part 2

Fiscal Notes in Legislative Bills

Part Cross-References

The Legislative Finance Act, Title 5, ch. 12.

5-4-201. Requirement of fiscal notes with committee reports. All bills reported out of a committee of the legislature having an effect on the revenues, expenditures, or fiscal liability of the state or of a county or municipality, except appropriation measures carrying specific dollar amounts, shall include a fiscal note incorporating an estimate of such effect. Fiscal notes shall be requested by the presiding officer of either house, who shall determine the need for the note at the time of introduction.

History: En. Sec. 1, Ch. 53, L. 1965; R.C.M. 1947, 43-1001; amd. Sec. 1, Ch. 229, L. 1983.

5-4-202. Requests for notes by committee, house, or sponsor. A fiscal note also may be requested on a bill, as the joint rules of the senate and the house of representatives may allow, by:

(1) a committee considering the bill;

(2) a majority of the members of the house in which the bill is to be considered, at the time of second reading; or

(3) the sponsor, through the presiding officer.

History: En. Sec. 5, Ch. 53, L. 1965; amd. Sec. 1, Ch. 11, L. 1974; R.C.M. 1947, 43-1005.

5-4-203. Budget director to prepare note. The budget director, in cooperation with the state or local agencies or officials or organizations representing local agencies or officials affected by the bill, is responsible for the preparation of the fiscal note and shall return same within 6 days. The director may request additional time to complete a note, which extension must be submitted to the presiding officer or committee requesting the note for approval.

History: En. Sec. 2, Ch. 53, L. 1965; amd. Sec. 1, Ch. 6, L. 1974; amd. Sec. 97, Ch. 326, L. 1974; amd. Sec. 1, Ch. 321, L. 1975; R.C.M. 1947, 43-1002; amd. Sec. 2, Ch. 229, L. 1983.

Cross-References

Appointment of Budget Director, 17-7-103.

5-4-204. Submission of fiscal note — sponsor's fiscal note — distribution to legislators. (1) A completed fiscal note shall be submitted by the budget director to the presiding officer who requested it. Upon receipt of the completed fiscal note, the presiding officer shall notify the sponsor of the bill for which the fiscal note was prepared that the fiscal note has been completed and is available for review. Within 24 hours following notification, the sponsor must:

(a) notify the presiding officer that he concurs with the completed fiscal note;

(b) request additional time, not to exceed 24 hours, to consult with the budget director on the fiscal note; or

(c) elect to prepare a sponsor's fiscal note as provided in subsection (4).

(2) (a) If the sponsor concurs with the completed fiscal note prepared by the budget director or elects to prepare a sponsor's fiscal note, the presiding officer shall refer the completed fiscal note prepared by the budget director to the committee considering the bill. If the bill is printed, the note shall be reproduced and placed on the members' desks.

(b) If the sponsor requests additional time to consult with the budget director, the presiding officer shall notify the sponsor and the budget director of the time, not to extend beyond the time limitation specified in subsection (1)(b), by which:

(i) the budget director shall submit a revised completed fiscal note to the presiding officer;

(ii) the sponsor shall notify the presiding officer that he concurs with the original completed fiscal note; or

(iii) the sponsor shall elect to prepare a sponsor's fiscal note as provided in subsection (4).

(3) At the time specified as provided in subsection (2)(b), the presiding officer shall refer the original or, if revised, the revised fiscal note to the committee considering the bill. If the bill is printed, the note shall be reproduced and placed on the members' desks.

(4) (a) If a sponsor elects to prepare a sponsor's fiscal note, he shall prepare the fiscal note as provided in 5-4-205 and return the completed sponsor's fiscal note to the presiding officer within 4 days of his election to prepare a sponsor's fiscal note.

(b) The presiding officer may grant additional time to the sponsor to prepare the sponsor's fiscal note.

(c) Upon receipt of the completed sponsor's fiscal note, the presiding officer shall refer it to the committee hearing the bill. If the bill is printed, the note must be identified as a sponsor's fiscal note, reproduced, and placed on the members' desks.

History: En. Sec. 3, Ch. 53, L. 1965; amd. Sec. 97, Ch. 326, L. 1974; amd. Sec. 2, Ch. 321, L. 1975; R.C.M. 1947, 43-1003; amd. Sec. 1, Ch. 417, L. 1985.

5-4-205. Contents of notes. Fiscal notes shall, where possible, show in dollar amounts the estimated increase or decrease in revenues or expenditures, costs which may be absorbed without additional funds, and long-range financial implications. No comment or opinion relative to merits of the bill shall be included; however, technical or mechanical defects may be noted.

History: En. Sec. 4, Ch. 53, L. 1965; R.C.M. 1947, 43-1004.

5-4-206. Background information to legislators on request. The budget director shall make available on request to any member of the legislature all background information used in developing a fiscal note.

History: En. Sec. 6, Ch. 53, L. 1965; amd. Sec. 97, Ch. 326, L. 1974; amd. Sec. 3, Ch. 321, L. 1975; R.C.M. 1947, 43-1006.

5-4-207. Repealed. Sec. 2, Ch. 274, L. 1993.

History: En. Sec. 9, Ch. 266, L. 1987; amd. Sec. 4, Ch. 195, L. 1991.

5-4-208 and 5-4-209 reserved.

5-4-210. Estimate of fiscal impact on local government required. (1) A bill that, if enacted, may require a local government unit to perform an activity or provide a service or facility that requires a direct expenditure of additional funds without a specific means to finance the activity, service, or facility in violation of 1-2-112 or 1-2-113 must be accompanied, at the time that the bill is presented for introduction to the chief clerk of the house of representatives or the secretary of the senate, by an estimate of all direct and indirect fiscal impacts on a local government unit. The estimate of fiscal impacts must be prepared by the budget director in cooperation with a local government unit affected by the bill. The budget director has 10 days to prepare the estimate.

(2) The estimate must show in dollar amounts the increase in expenditures that may be required by the bill. Comment or opinion relative to the merits of the bill may not be included in the estimate. However, technical or mechanical defects may be noted. Upon completion of the estimate, the budget director shall submit the estimate to the requestor of the bill.

History: En. Sec. 4, Ch. 416, L. 1995.

Part 3

Action by Governor on Bills

Part Cross-References

Bills, Art. V, sec. 11, Mont. Const.

Immunity from suit for gubernatorial actions on bills, 2-9-113.

5-4-301. Bills received by the governor — how endorsed. Each bill passed by the legislature, except bills proposing amendments to the Montana constitution, bills ratifying proposed amendments to the United States constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor for his signature. Each bill must, as soon as delivered to the governor, be endorsed as follows: "This bill was received by the governor this .... day of ...., 19..". The endorsement must be signed by an assistant authorized by the governor or by the governor himself.

History: En. Sec. 270, Pol. C. 1895; re-en. Sec. 100, Rev. C. 1907; re-en. Sec. 84, R.C.M. 1921; Cal. Pol. C. Sec. 309; re-en. Sec. 84, R.C.M. 1935; amd. Sec. 1, Ch. 31, L. 1973; R.C.M. 1947, 43-501.

5-4-302. Approval of bills. When the governor approves a bill, he must set his name thereto with the date of his approval and deposit the same in the office of the secretary of state.

History: En. Sec. 271, Pol. C. 1895; re-en. Sec. 101, Rev. C. 1907; re-en. Sec. 85, R.C.M. 1921; Cal. Pol. C. Sec. 310; re-en. Sec. 85, R.C.M. 1935; amd. Sec. 1, Ch. 157, L. 1973; R.C.M. 1947, 43-502(1).

Cross-References

Secretary of State to assign chapter numbers to new laws, 5-11-204.

5-4-303. Line item veto. If any bill presented to the governor contains several distinct items of appropriation of money, he may disapprove one or more items while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects and his objections thereto. The governor must transmit to the house in which the bill originated (or to the secretary of state if the legislature is not in session) a copy of such statement, and the items so objected to must be separately reconsidered in the same manner as bills which have been disapproved by the governor.

History: En. Sec. 271, Pol. C. 1895; re-en. Sec. 101, Rev. C. 1907; re-en. Sec. 85, R.C.M. 1921; Cal. Pol. C. Sec. 310; re-en. Sec. 85, R.C.M. 1935; amd. Sec. 1, Ch. 157, L. 1973; R.C.M. 1947, 43-502(2).

Cross-References

Veto power, Art. VI, sec. 10, Mont. Const.

5-4-304. Amendatory veto. The governor may return any bill to the originating house with his recommendations for amendment. Such house shall reconsider the bill under its rules relating to amendment offered in committee of the whole. The bill is then subject to the following procedures:

(1) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in committee of the whole, the bill and the originating house's approval or disapproval of the governor's recommendations.

(2) If both houses approve the governor's recommendations, the bill shall be returned to the governor for his reconsideration.

(3) If both houses disapprove the governor's recommendations, the bill shall be returned to the governor for his reconsideration.

(4) If one house disapproves the governor's recommendations and the other house approves, then either house may request a conference committee, which may be a free conference committee:

(a) If both houses adopt a conference committee report, the bill in accordance with the report shall be returned to the governor for his reconsideration.

(b) If a conference committee fails to reach agreement or if its report is not adopted by both houses, the governor's recommendations shall be considered not approved and the bill shall be returned to the governor for further consideration.

(5) The governor may not return the bill for amendment a second time.

History: En. Sec. 271, Pol. C. 1895; re-en. Sec. 101, Rev. C. 1907; re-en. Sec. 85, R.C.M. 1921; Cal. Pol. C. Sec. 310; re-en. Sec. 85, R.C.M. 1935; amd. Sec. 1, Ch. 157, L. 1973; R.C.M. 1947, 43-502(3).

Cross-References

Veto power, Art. VI, sec. 10, Mont. Const.

5-4-305. Bills returned without approval. (1) A bill or item or items of an appropriations bill become law whenever:

(a) the bill passes both houses of the legislature;

(b) the bill is returned by the governor without his signature and with objections thereto or, if it is a bill containing several items of appropriation of money, with objections to one or more items; and

(c) upon reconsideration the bill or item or items pass both houses by the constitutional majority.

(2) The bill or item or items shall be authenticated by a certificate endorsed on or attached to the bill or the copy of the statement of objections. The form of the certificate shall be: "This bill having been returned by the governor with his objections thereto and, after reconsideration, having passed both houses by the constitutional majority has become a law this .... day of ...., A.D. ...." or "The following items in the within statement (naming them) having, after

reconsideration, passed both houses by the constitutional majority have become a law this .... day of ...., A.D. ...". The endorsement, signed by the president of the senate and the speaker of the house, is sufficient authentication of the bill or item or items.

(3) The authenticated bill or statement shall be delivered to the governor, who shall deposit it with the laws in the office of the secretary of state.

History: En. Sec. 272, Pol. C. 1895; re-en. Sec. 102, Rev. C. 1907; re-en. Sec. 86, R.C.M. 1921; Cal. Pol. C. Sec. 311; re-en. Sec. 86, R.C.M. 1935; amd. Sec. 7, Ch. 309, L. 1977; R.C.M. 1947, 43-503.

Cross-References

Veto power, Art. VI, sec. 10, Mont. Const.

5-4-306. Return when legislature not in session. (1) If, on the day the governor desires to return a bill without his approval and with his objections to the bill to the house in which it originated, that house has adjourned for the day (but not for the session), he may deliver the bill with his message to the presiding officer, secretary, clerk, or any member of such house. The delivery is as effectual as though returned in open session if the governor, on the first day the house is again in session, by message, notifies it of the delivery and of the time when and the person to whom the delivery was made.

(2) If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his reasons for the veto to the secretary of state. If the bill was not approved by two-thirds of the members voting on the final vote on the bill, the secretary of state shall within 5 working days of receipt of the bill and veto message mail a copy of the title of the bill and the veto message to each member of the legislature. If the bill was approved by two-thirds of the members voting on the final vote on the bill, the secretary of state shall poll the members of the legislature. The secretary of state shall within 5 working days of receipt of the bill and veto message send by certified mail to each legislator, at an address provided by the legislator, a copy of the bill and the veto message, instructions for casting a vote, and notice of the date by which each legislator shall return his vote. The date for return must be within 30 days after the date on which the bill, veto message, and voting instructions are sent. A legislator may cast and return a vote by delivering it in person, mailing it, or sending a facsimile transmission of it to the office of the secretary of state. The secretary of state shall tally the votes within 1 working day after the date for return of the votes. If two-thirds or more of the members of each house vote to override the veto, the bill shall become law.

(3) The legislature may reconvene to reconsider any bill vetoed by the governor when the legislature is not in session by using the statutory procedure provided for convening in special session.

History: En. Sec. 273, Pol. C. 1895; re-en. Sec. 103, Rev. C. 1907; re-en. Sec. 87, R.C.M. 1921; Cal. Pol. C. Sec. 312; re-en. Sec. 87, R.C.M. 1935; amd. Sec. 1, Ch. 63, L. 1973; R.C.M. 1947, 43-504; amd. Sec. 7, Ch. 3, L. 1985; amd. Sec. 1, Ch. 317, L. 1989; amd. Sec. 2, Ch. 685, L. 1991.

Cross-References

Special sessions, Art. V. sec. 6, Mont. Const.; Title 5, ch. 3.

Veto power, Art. VI, sec. 10, Mont. Const.

5-4-307. Bills remaining with governor. (1) A bill that has passed both houses of the legislature and has not been returned by the governor within 10 days after its delivery to the governor becomes law.

(2) The governor shall deliver the bill to the secretary of state and direct the secretary of state to authenticate it by a certificate endorsed on or attached to the bill. The form of the certificate must be: "This bill having remained with the governor 10 days, it has become a law this.... day of....,....". The certificate must be signed by the secretary of state and deposited with the laws in the secretary of state's office.

History: En. Sec. 274, Pol. C. 1895; re-en. Sec. 104, Rev. C. 1907; re-en. Sec. 88, R.C.M. 1921; Cal. Pol. C. Sec. 313; re-en. Sec. 88, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1973; amd. Sec. 8, Ch. 309, L. 1977; R.C.M. 1947, 43-505; amd. Sec. 18, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (1) and (2) substituted language requiring that a bill becomes law after remaining with the Governor for 10 days regardless of whether or not the Legislature is in session for former language relating to 5-day period during session or 25-day period after the Legislature is adjourned; and made minor changes in style. Amendment effective March 12, 1997.

Cross-References

Veto power, Art. VI, sec. 10, Mont. Const.

5-4-308. Transmittal of veto messages to legislative services division. The governor shall transmit one copy of each veto message to the legislative services division.

History: En. Sec. 1, Ch. 3, L. 1983; amd. Sec. 19, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 at end substituted "legislative services division" for "legislative council". Amendment effective March 12, 1997.

Cross-References

Legislative Council, Title 5, ch. 11.

Part 4

Legislative History Act
(Repealed. Sec. 4, Ch. 11, L. 1997)

Part Compiler's Comments

Histories of Repealed Sections:

5-4-401. En. 43-519 by Sec. 1, Ch. 560, L. 1977; R.C.M. 1947, 43-519.

5-4-402. En. 43-520 by Sec. 2, Ch. 560, L. 1977; R.C.M. 1947, 43-520; amd. Sec. 2, Ch. 466, L. 1983; amd. Sec. 2, Ch. 29, L. 1985; amd. Sec. 2, Ch. 420, L. 1989.

5-4-403. En. 43-521 by Sec. 3, Ch. 560, L. 1977; R.C.M. 1947, 43-521.

5-4-404. En. 43-522 by Sec. 4, Ch. 560, L. 1977; R.C.M. 1947, 43-522; amd. Sec. 1, Ch. 29, L. 1985; amd. Sec. 3, Ch. 420, L. 1989.

CHAPTER 5

LEGISLATIVE PROCEDURES

Part 1 — Witnesses Before Legislature

5-5-101. Subpoenas.
5-5-102. Service of subpoenas.
5-5-103. Contempt.
5-5-104. Compelling attendance.
5-5-105. Immunity of witness.

Part 2 — Organization

5-5-201. Power to administer oaths.

5-5-202. Interim activities of committees.
5-5-203 through 5-5-210 reserved.
5-5-211. Appointment and composition of joint subcommittees.
5-5-212. Implied resignation of subcommittee member — vacancies.
5-5-213. Officers of subcommittees.
5-5-214. Interim activity.
5-5-215. Duties of subcommittees.
5-5-216. Recommendations of subcommittees.
5-5-217. Selection and assignment of interim studies.
5-5-218 through 5-5-220 reserved.
5-5-221. Repealed.
5-5-222. Repealed.

Part 3 — Appointments by Governor

5-5-301. Governor to transmit list of appointments to legislature.
5-5-302. Nominations to senate to be in writing.
5-5-303. Resolution of concurrence.

Part 4 — Impeachment

5-5-401. Officers liable to impeachment.
5-5-402. Sole power of impeachment.
5-5-403. Trial of impeachments.
5-5-404. Officers of the court.
5-5-405 through 5-5-410 reserved.
5-5-411. Articles of impeachment.
5-5-412. Delivery of articles to senate.
5-5-413. Suspension pending trial — filling vacancy.
5-5-414. Time of hearing — service of defendant.
5-5-415. Service — how made.
5-5-416. Senate to be sworn.
5-5-417. Proceedings on failure to appear.
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5-5-424 through 5-5-430 reserved.
5-5-431. Nature of the judgment.
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5-5-433. Criminal prosecution not barred.

Chapter Cross-References

Referendum, Art. III, sec. 5, Mont. Const.

Senate to confirm executive appointments, Art. VI, sec. 8, Mont. Const.

Vacancy in Office of Governor, Art. VI, sec. 14, Mont. Const.

Senate to confirm judicial replacement nominations, Art. VII, sec. 8, Mont. Const.

Constitutional Convention, Art. XIV, sec. 1, 4, and 8, Mont. Const.

Code Commissioner to make report to Legislature, 1-11-204.

Legislative intent — poll, 2-4-403.

Legislative review of administrative rules, 2-4-412.

Legislative review of agencies, Title 2, ch. 8, part 1.

Elective officer's inability to perform — filling vacancy, 2-16-504.

Election by Legislature if President of Senate and Speaker unable to assume office of Governor, 2-16-512.

Legislative determination of state of emergency or disaster, 10-3-302, 10-3-303.

Continuity of government, Title 10, ch. 3, part 6.

Tie vote in election for state executive officers, 13-16-504.

Board of Examiners to issue long-range building program bonds — authorization by Legislature, 17-5-402.

Board of Investments — coal tax trust fund investment — reports required, 17-6-305.

Investment of up to 25% of coal tax trust fund in Montana economy — report by board, 17-6-305.

Legislative action on budget, 17-7-131.

Part 1
Witnesses Before Legislature

Part Cross-References

Legislative Council powers relating to hearings, 5-11-107.

Media Confidentiality Act, Title 26, ch. 1, part 9.

Subpoenas and witnesses, Title 26, ch. 2.

Privileged communications, 27-1-804.

5-5-101. Subpoenas. (1) A subpoena requiring the attendance of any witness before either house of the legislature or a committee thereof may be issued by the president of the senate, speaker of the house, or the chairman of any committee before whom the attendance of the witness is desired.

(2) It is sufficient if:

(a) it states whether the proceeding is before the house of representatives, the senate, or a committee;

(b) it is addressed to the witness;

(c) it requires the attendance of such witness at a time and place certain;

(d) it is signed by the president of the senate, speaker of the house, or chairman of a committee.

History: En. Sec. 260, Pol. C. 1895; re-en. Sec. 95, Rev. C. 1907; re-en. Sec. 79, R.C.M. 1921; Cal. Pol. C. Sec. 300; re-en. Sec. 79, R.C.M. 1935; R.C.M. 1947, 43-401.

5-5-102. Service of subpoenas. The subpoena may be served by any elector of the state, and his affidavit that he delivered a copy to the witness is evidence of service.

History: En. Sec. 261, Pol. C. 1895; re-en. Sec. 96, Rev. C. 1907; re-en. Sec. 80, R.C.M. 1921; Cal. Pol. C. Sec. 301; re-en. Sec. 80, R.C.M. 1935; R.C.M. 1947, 43-402.

5-5-103. Contempt. If any witness neglects or refuses to obey such subpoena or, appearing, neglects or refuses to testify, the senate or house may, by resolution entered on the journal, commit him for contempt.

History: En. Sec. 262, Pol. C. 1895; re-en. Sec. 97, Rev. C. 1907; re-en. Sec. 81, R.C.M. 1921; Cal. Pol. C. Sec. 302; re-en. Sec. 81, R.C.M. 1935; R.C.M. 1947, 43-403.

5-5-104. Compelling attendance. Any witness neglecting or refusing to attend in obedience to a subpoena may be arrested by the sergeant-at-arms and brought before the senate or house. The only warrant of authority necessary to authorize the arrest is a copy of a resolution of the senate or house, signed by the president of the senate or speaker of the house and countersigned by the secretary or clerk.

History: En. Sec. 263, Pol. C. 1895; re-en. Sec. 98, Rev. C. 1907; re-en. Sec. 82, R.C.M. 1921; Cal. Pol. C. Sec. 303; re-en. Sec. 82, R.C.M. 1935; amd. Sec. 6, Ch. 309, L. 1977; R.C.M. 1947, 43-404.

5-5-105. Immunity of witness. (1) No person sworn and examined before either house of the legislature or any committee thereof can be held to answer criminally or be subject to any penalty or forfeiture for any fact or act touching which he is required to testify. No statement made or paper produced by any such witness is competent evidence in any criminal proceeding against such witness.

(2) Such witness cannot refuse to testify to any fact or to produce any paper touching which he is examined for the reason that his testimony or the production of such paper tends to disgrace him or render him infamous.

(3) Nothing in this section exempts any witness from prosecution and punishment for perjury committed by him on such examination.

History: En. Sec. 264, Pol. C. 1895; re-en. Sec. 99, Rev. C. 1907; re-en. Sec. 83, R.C.M. 1921; Cal. Pol. C. Sec. 304; re-en. Sec. 83, R.C.M. 1935; R.C.M. 1947, 43-405.

Cross-References

Perjury, 45-7-201.

Part 2
Organization

Part Cross-References

Legislative Council, Title 5, ch. 11.

Legislative Finance Committee, Title 5, ch. 12, part 2.

Legislative Audit Committee, Title 5, ch. 13, part 2.

Administrative Code Committee, Title 5, ch. 14.

Legislative Consumer Committee, Title 5, ch. 15, part 1.

Environmental Quality Council, Title 5, ch. 16.

Revenue Oversight Committee, Title 5, ch. 18.

Committee on Indian Affairs, Title 5, ch. 19.

Committee on Public Employee Retirement Systems, Title 5, ch. 21.

Joint Oversight Committee on Children and Families, Title 5, ch. 22.

Committee to prepare arguments for and against ballot issues, 13-27-402 through 13-27-405.

Selection committee for Commissioner of Political Practices, 13-37-102.

Judiciary Committee — representation on Criminal Intelligence Information Advisory Council, 44-5-501.

5-5-201. Power to administer oaths. The members of any committee may administer oaths to witnesses in any matter under examination.

History: En. Secs. 4 and 5, p. 170, L. 1891; re-en. Sec. 200, Pol. C. 1895; re-en. Sec. 67, Rev. C. 1907; re-en. Sec. 65, R.C.M. 1921; Cal. Pol. C. Sec. 252; re-en. Sec. 65, R.C.M. 1935; R.C.M. 1947, 43-301(part).

5-5-202. Interim activities of committees. During an interim when the legislature is not in session, all regularly appointed standing or select committees of either house not formally discharged prior to the final adjournment of the preceding session shall continue as such committees. They are empowered to continue to sit as such committees and may act through their joint subcommittees.

History: En. Sec. 10, Ch. 431, L. 1973; R.C.M. 1947, 43-718; amd. Sec. 1, Ch. 138, L. 1979; amd. Sec. 1, Ch. 353, L. 1981.

Cross-References

Compensation and expenses when Legislature not in session, 5-2-302.

5-5-203 through 5-5-210 reserved.

5-5-211. Appointment and composition of joint subcommittees. (1) Senate joint subcommittee members must be appointed by the committee on committees.

(2) House joint subcommittee members must be appointed by the speaker of the house.

(3) Unless otherwise indicated by the legislative council, all appointments to joint subcommittees must be made within 30 days after the presiding officer

of the committee on committees and the speaker of the house have been notified that an interim joint subcommittee has been created.

(4) A legislator may not serve on more than two interim joint subcommittees.

(5) The composition of each subcommittee must be as follows:

(a) four members of the house, no more than two of whom may be of one political party; and

(b) four members of the senate, no more than two of whom may be of one political party.

History: En. 43-716 by Sec. 8, Ch. 431, L. 1973; amd. Sec. 1, Ch. 44, L. 1974; amd Sec. 15, Ch. 309, L. 1977; R.C.M. 1947, 43-716(1); amd. Sec. 1, Ch. 596, L. 1979; amd. Sec. 2, Ch. 353, L. 1981; amd. Sec. 1, Ch. 513, L. 1995.

5-5-212. Implied resignation of subcommittee member — vacancies. If a subcommittee member misses more than two committee meetings or hearings without just cause when the legislature is not in session, the member is considered to have resigned and the vacancy shall be filled in the same manner as the original appointment. Any other vacancy shall be filled in the same manner.

History: En. 43-716 by Sec. 8, Ch. 431, L. 1973; amd. Sec. 1, Ch. 44, L. 1974; amd Sec. 15, Ch. 309, L. 1977; R.C.M. 1947, 43-716(6).

5-5-213. Officers of subcommittees. Each subcommittee shall elect its chairman and vice-chairman from among its members. The chairman and vice-chairman may not be members of the same political party.

History: En. 43-716 by Sec. 8, Ch. 431, L. 1973; amd. Sec. 1, Ch. 44, L. 1974; amd Sec. 15, Ch. 309, L. 1977; R.C.M. 1947, 43-716(2).

5-5-214. Interim activity. The subcommittees may perform their functions when the legislature is not in session. The personnel, data, and facilities of the legislative services division must be made available to the subcommittees.

History: En. 43-716 by Sec. 8, Ch. 431, L. 1973; amd. Sec. 1, Ch. 44, L. 1974; amd Sec. 15, Ch. 309, L. 1977; R.C.M. 1947, 43-716(3); amd. Sec. 20, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 near end substituted "legislative services division" for "legislative council"; and made minor changes in style. Amendment effective March 12, 1997.

Cross-References

Functional organization and responsibilities of Legislative Council, 5-11-112.

5-5-215. Duties of subcommittees. (1) Each subcommittee shall accumulate, compile, analyze, and furnish information bearing upon its assignment and relevant to existing or prospective legislation as it determines, on its own initiative, to be pertinent to the adequate completion of its work.

(2) Each subcommittee shall prepare bills and resolutions that, in its opinion, the welfare of the state may require for presentation to the next regular session of the legislature.

(3) The legislative services division shall keep accurate records of the activities and proceedings of each subcommittee.

History: En. 43-716 by Sec. 8, Ch. 431, L. 1973; amd. Sec. 1, Ch. 44, L. 1974; amd Sec. 15, Ch. 309, L. 1977; R.C.M. 1947, 43-716(4); amd. Sec. 15, Ch. 545, L. 1995.

5-5-216. Recommendations of subcommittees. A subcommittee appointed for the purpose of making a study designated by the legislative council may make recommendations for legislation. These recommendations and the study report shall be submitted to the legislature as provided in 5-11-210.

History: En. 43-716 by Sec. 8, Ch. 431, L. 1973; amd. Sec. 1, Ch. 44, L. 1974; amd Sec. 15, Ch. 309, L. 1977; R.C.M. 1947, 43-716(5); amd. Sec. 2, Ch. 596, L. 1979; amd. Sec. 15, Ch. 112, L. 1991.

5-5-217. Selection and assignment of interim studies. (1) Immediately following adjournment sine die, the legislative services division shall prepare a list of study requests adopted. A copy of the list must be distributed to each legislator with a request that the legislator rank the study requests in the order of importance that the legislator ascribes to them. The lists, with the priorities assigned, must be returned to the legislative services division.

(2) The legislative council shall review the priority lists returned by legislators, review estimated costs and staff assistance associated with the requested studies, and designate those studies to be assigned. In designating studies, the legislative council may combine requests as one study when the subject matter of those requests is closely related. The legislative council shall group related studies together and shall designate the number of subcommittees to be assigned studies.

(3) The legislative services division shall inform the committee on committees and speaker of the house of those studies that have been selected and to which joint subcommittee each study has been assigned. The committee on committees and speaker shall then proceed under 5-5-211 to appoint the subcommittees.

History: En. Sec. 4, Ch. 596, L. 1979; amd. Sec. 3, Ch. 353, L. 1981; amd. Sec. 21, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (1), in two places, and in (3) substituted "legislative services division" for "legislative council"; and made minor changes in style. Amendment effective March 12, 1997.

5-5-218 through 5-5-220 reserved.

5-5-221. Repealed. Sec. 5, Ch. 596, L. 1979.

History: En. 43-717 by Sec. 9, Ch. 431, L. 1973; amd. Sec. 16, Ch. 309, L. 1977; R.C.M. 1947, 43-717(1), (2).

5-5-222. Repealed. Sec. 5, Ch. 596, L. 1979.

History: En. 43-717 by Sec. 9, Ch. 431, L. 1973; amd. Sec. 16, Ch. 309, L. 1977; R.C.M. 1947, 43-717(3).

Part 3
Appointments by Governor

Part Cross-References

Senate to confirm appointments made by Governor, Art. VI, sec. 8, Mont. Const.

Senate to confirm judicial replacement nominees, Art. VII, sec. 8, Mont. Const.

Senate to confirm appointments to Board of Regents and Board of Education, Art. X, sec. 9, Mont. Const.; 2-15-1505; 2-15-1507.

Senate to confirm appointment of department heads, 2-15-111.

Senate to confirm appointment of members of quasi-judicial boards, 2-15-124.

Senate to confirm appointment of officers generally, 2-16-203.

Senate to confirm appointments to fill judicial vacancies, 3-1-1013.

Senate to confirm appointment filling vacancy resulting from impeachment trial, 5-5-413.

Senate to confirm appointment of Commissioner of Political Practices, 13-37-102.

Senate to confirm appointments to State Tax Appeal Board, 15-2-101.

Senate to confirm appointments to Montana Arts Council, 22-2-102.

Senate to confirm appointments to Board of Trustees of Montana Historical Society, 22-3-104.

5-5-301. Governor to transmit list of appointments to legislature. Within 10 days after the meeting of the legislature, the governor must transmit to it a list of all appointments made by him, under the provisions of 2-16-506, during the recess of the legislature.

History: En. Sec. 371, Pol. C. 1895; re-en. Sec. 146, Rev. C. 1907; re-en. Sec. 125, R.C.M. 1921; Cal. Pol. C. Sec. 381; re-en. Sec. 125, R.C.M. 1935; R.C.M. 1947, 82-1302.

5-5-302. Nominations to senate to be in writing. Nominations made by the governor to the senate must be in writing, designating the residence of the nominee and the office for which he is nominated.

History: En. Sec. 1000, Pol. C. 1895; re-en. Sec. 356, Rev. C. 1907; re-en. Sec. 424, R.C.M. 1921; Cal. Pol. C. Sec. 889; re-en. Sec. 424, R.C.M. 1935; R.C.M. 1947, 59-407.

5-5-303. Resolution of concurrence. Whenever the senate concurs in a nomination, its secretary must immediately deliver a copy of the resolution of concurrence, certified by the president and secretary, to the secretary of state and another copy, certified by the secretary, to the governor.

History: En. Sec. 1001, Pol. C. 1895; re-en. Sec. 357, Rev. C. 1907; re-en. Sec. 425, R.C.M. 1921; Cal. Pol. C. Sec. 890; re-en. Sec. 425, R.C.M. 1935; R.C.M. 1947, 59-408.

Part 4
Impeachment

Part Cross-References

Impeachment, Art. V, sec. 13, Mont. Const.

Succession to Office of Governor, Art. VI, sec. 14, Mont. Const.

Standards of conduct, Title 2, ch. 2.

Vacancy created in public office, 2-16-501.

Notice of removal of public officer, 2-16-503.

Senate as Court of Impeachment, 3-1-101.

Judicial Standards Commission, Title 3, ch. 1, part 11.

Impeachment of Commissioner of Political Practices, 13-37-105.

5-5-401. Officers liable to impeachment. The governor, executive officers, heads of state departments, and judicial officers are liable to impeachment for felonies and misdemeanors or malfeasance in office.

History: Our present impeachment laws are substantially the same as the territorial acts which provided for trial by the council. See Secs. 41-62, pp. 196-199, Cod. Stat. 1871; re-en. as Secs. 41-62, 3d Div. Rev. Stat. 1879; re-en. as Secs. 41-63, 3d Div. Comp. Stat. 1887; re-en. Sec. 1500, Pen. C. 1895; re-en. Sec. 8972, Rev. C. 1907; re-en. Sec. 11668, R.C.M. 1921; Cal. Pen. C. Sec. 737; re-en. Sec. 11668, R.C.M. 1935; Sec. 94-5401, R.C.M. 1947; amd. Sec. 2, Ch. 5, L. 1973; redes. 95-2801 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 29, Ch. 309, L. 1977; R.C.M. 1947, 95-2801.

Cross-References

Legislative Auditor to report malfeasance by state officer, 5-13-304.

Bribing members of political gathering, 13-35-220.

Mishandling appropriations, 17-8-103, 17-8-104.

Crimes, Title 45.

Bribery and corrupt influence, Title 45, ch. 7, part 1.

Perjury and other falsification in official matters, Title 45, ch. 7, part 2.

Obstructing governmental operations, Title 45, ch. 7, part 3.

Official misconduct, 45-7-401.

Disorderly conduct, 45-8-101.

State lands — acceptance of improper compensation, 77-1-112.

Punishment for acceptance of improper compensation, 77-1-115.

Misconduct of officers in relation to oil and gas leases, 77-3-409.

5-5-402. Sole power of impeachment. The sole power of impeachment vests in the house of representatives, the concurrence of two-thirds of all the members being necessary to the exercise thereof.

History: En. Sec. 1501, Pen. C. 1895; re-en. Sec. 8973, Rev. C. 1907; re-en. Sec. 11669, R.C.M. 1921; re-en. Sec. 11669, R.C.M. 1935; Sec. 94-5402, R.C.M. 1947; amd. Sec. 1, Ch. 10, L. 1973; redes. 95-2802 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2802(part).

5-5-403. Trial of impeachments. (1) Impeachment shall be tried by the senate, the court of impeachment, sitting for that purpose. The senators shall be upon oath or affirmation to do justice according to law and evidence.

(2) The court has jurisdiction to try impeachments presented by the house of representatives.

History: (1)Ap. p. Sec. 1501, Pen. C. 1895; re-en. Sec. 8973, Rev. C. 1907; re-en. Sec. 11669, R.C.M. 1921; re-en. Sec. 11669, R.C.M. 1935; Sec. 94-5402, R.C.M. 1947; amd. Sec. 1, Ch. 10, L. 1973; redes. 95-2802 by Sec. 29, Ch. 513, L. 1973; Sec. 95-2802, R.C.M. 1947; Ap. p. Sec. 6, C. Civ. Proc. 1895; re-en. Sec. 6240, Rev. C. 1907; re-en. Sec. 8786, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 36; re-en. Sec. 8786, R.C.M. 1935; Sec. 93-103, R.C.M. 1947; (2)En. Sec. 7, C. Civ. Proc. 1895; re-en. Sec. 6241, Rev. C. 1907; re-en. Sec. 8787, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 37; re-en. Sec. 8787, R.C.M. 1935; amd. Sec. 1, Ch. 5, L. 1973; amd. Sec. 28, Ch. 309, L. 1977; Sec. 93-104, R.C.M. 1947; R.C.M. 1947, 93-103, 93-104, 95-2802(part).

5-5-404. Officers of the court. (1) The officers of the senate are officers of the court.

(2) When the governor or lieutenant governor is on trial, the chief justice of the supreme court shall preside.

History: (1)En. Sec. 8, C. Civ. Proc. 1895; re-en. Sec. 6242, Rev. C. 1907; re-en. Sec. 8788, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 38; Sec. 93-105, R.C.M. 1947; (2)En. Sec. 1501, Pen. C. 1895; re-en. Sec. 8973, Rev. C. 1907; re-en. Sec. 11669, R.C.M. 1921; re-en. Sec. 11669, R.C.M. 1935; Sec. 94-5402, R.C.M. 1947; amd. Sec. 1, Ch. 10, L. 1973; redes. 95-2802 by Sec. 29, Ch. 513, L. 1973; Sec. 95-2802, R.C.M. 1947; R.C.M. 1947, 93-105, 95-2802(part).

Cross-References

Officers of Senate, 5-2-221.

5-5-405 through 5-5-410 reserved.

5-5-411. Articles of impeachment. (1) All impeachments must be by resolution originated in and adopted by the house of representatives. The resolution shall be conducted through the house by managers elected by the house.

(2) The managers shall prepare articles of impeachment, present them at the bar of the senate, and prosecute them.

History: En. Sec. 1502, Pen. C. 1895; re-en. Sec. 8974, Rev. C. 1907; re-en. Sec. 11670, R.C.M. 1921; Cal. Pen. C. Sec. 738; re-en. Sec. 11670, R.C.M. 1935; Sec. 94-5403, R.C.M. 1947; redes. 95-2803 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 30, Ch. 309, L. 1977; R.C.M. 1947, 95-2803.

5-5-412. Delivery of articles to senate. When an officer is impeached by the house of representatives, the articles of impeachment must be delivered to the president of the senate.

History: En. Sec. 1503, Pen. C. 1895; re-en. Sec. 8975, Rev. C. 1907; re-en. Sec. 11671, R.C.M. 1921; Cal. Pen. C. Sec. 739; re-en. Sec. 11671, R.C.M. 1935; Sec. 94-5404, R.C.M. 1947; redes. 95-2804 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2804.

5-5-413. Suspension pending trial — filling vacancy. (1) Whenever articles of impeachment against any officer subject to impeachment are presented to the senate, such officer is temporarily suspended from his office and cannot act in his official capacity until he is acquitted.

(2) Upon such suspension of any officer other than the governor, his office must be at once temporarily filled by an appointment made by the governor,

with the advice and consent of the senate. The term of the appointment is until the acquittal of the party impeached or, in case of his removal, until the vacancy is filled at the next election as required by law.

History: **En. Sec. 1516, Pen. C. 1895; re-en. Sec. 8988, Rev. C. 1907; re-en. Sec. 11684, R.C.M. 1921; Cal. Pen. C. Sec. 751; re-en. Sec. 11684, R.C.M. 1935; Sec. 94-5417, R.C.M. 1947; redes. 95-2817 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2817.**

Cross-References

Vacancy and succession — executive office, Title 2, ch. 16, part 5.

Judicial Nomination Commission — judicial vacancy, Title 3, ch. 1, part 10.

5-5-414. Time of hearing — service of defendant. (1) The senate must assign a day for the hearing of the impeachment and inform the house of representatives thereof.

(2) The president of the senate must cause a copy of the articles of impeachment, with a notice to appear and answer the same at the time and place appointed, to be served on the defendant not less than 10 days before the day fixed for the hearing.

History: **En. Sec. 1504, Pen. C. 1895; re-en. Sec. 8976, Rev. C. 1907; re-en. Sec. 11672, R.C.M. 1921; Cal. Pen. C. Sec. 740; re-en. Sec. 11672, R.C.M. 1935; Sec. 94-5405, R.C.M. 1947; redes. 95-2805 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2805.**

5-5-415. Service — how made. The service must be made upon the defendant personally or, if he cannot upon diligent inquiry be found within the state, the senate, upon proof of that fact, may order publication to be made, in such manner as it may deem proper, of a notice requiring him to appear at a specified time and place and answer the articles of impeachment.

History: **En. Sec. 1505, Pen. C. 1895; re-en. Sec. 8977, Rev. C. 1907; re-en. Sec. 11673, R.C.M. 1921; Cal. Pen. C. Sec. 741; re-en. Sec. 11673, R.C.M. 1935; Sec. 94-5406, R.C.M. 1947; redes. 95-2806 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2806.**

5-5-416. Senate to be sworn. (1) At the time and place appointed and before the senate proceeds to act on the impeachment, the secretary must administer to the president of the senate, and the president of the senate to each of the members of the senate then present, an oath truly and impartially to hear, try, and determine the impeachment.

(2) No member of the senate can act or vote upon the impeachment or upon any question arising thereon without having taken such oath.

History: **En. Sec. 1510, Pen. C. 1895; re-en. Sec. 8982, Rev. C. 1907; re-en. Sec. 11678, R.C.M. 1921; Cal. Pen. C. Sec. 745; re-en. Sec. 11678, R.C.M. 1935; Sec. 94-5411, R.C.M. 1947; redes. 95-2811 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2811.**

5-5-417. Proceedings on failure to appear. If the defendant does not appear, the senate, upon proof of service or publication as provided in 5-5-414 and 5-5-415, may of its own motion or for cause shown assign another day for hearing the impeachment or may proceed in the absence of the defendant to trial and judgment.

History: **En. Sec. 1506, Pen. C. 1895; re-en. Sec. 8978, Rev. C. 1907; re-en. Sec. 11674 R.C.M. 1921; Cal. Pen. C. Sec. 742; re-en. Sec. 11674, R.C.M. 1935; Sec. 94-5407, R.C.M. 1947; redes. 95-2807 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2807.**

5-5-418. Counsel may be appointed. (1) If the defendant appears and is unable to procure the assistance of counsel, it is the duty of the president of the senate to appoint some suitable person to assist him in his defense.

(2) If the defendant is served by publication and fails to appear, it is the duty of the president of the senate to appoint some person or counsel to appear in his behalf and make defense for him.

History: En. Sec. 1507, Pen. C. 1895; re-en. Sec. 8979, Rev. C. 1907; re-en. Sec. 11675, R.C.M. 1921; re-en. Sec. 11675, R.C.M. 1935; Sec. 94-5408, R.C.M. 1947; redes. 95-2808 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2808.

5-5-419. Defendant's objection or answer. When the defendant appears, he may in writing object to the sufficiency of the articles of impeachment or he may answer the same by an oral plea of not guilty. The plea must be entered upon the journal and must put in issue every material allegation of the articles of impeachment.

History: En. Sec. 1508, Pen. C. 1895; re-en. Sec. 8980, Rev. C. 1907; re-en. Sec. 11676, R.C.M. 1921; Cal. Pen. C. Sec. 743; re-en. Sec. 11676, R.C.M. 1935; Sec. 94-5409, R.C.M. 1947; redes. 95-2809 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2809.

5-5-420. Overrule of objection — defendant's plea. If the objection to the sufficiency of the articles of impeachment is not sustained by a majority of the members of the senate, the defendant must be ordered forthwith to answer the articles of impeachment. If he then pleads guilty, the senate must render judgment of conviction against him. If he pleads not guilty or refuses to plead, the senate must, at such time as it may appoint, proceed to try the impeachment.

History: En. Sec. 1509, Pen. C. 1895; re-en. Sec. 8981, Rev. C. 1907; re-en. Sec. 11677, R.C.M. 1921; Cal. Pen. C. Sec. 744; re-en. Sec. 11677, R.C.M. 1935; Sec. 94-5410, R.C.M. 1947; redes. 95-2810 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2810.

5-5-421. Two-thirds vote necessary to a conviction. The defendant cannot be convicted on impeachment without the concurrence of two-thirds of the members elected, voting by ayes and noes. If two-thirds of the members elected do not concur in a conviction, he must be acquitted.

History: En. Sec. 1511, Pen. C. 1895; re-en. Sec. 8983, Rev. C. 1907; re-en. Sec. 11679, R.C.M. 1921; Cal. Pen. C. Sec. 746; re-en. Sec. 11679, R.C.M. 1935; Sec. 94-5412, R.C.M. 1947; redes. 95-2812 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2812.

5-5-422. Judgment on conviction — how pronounced. After conviction the senate must, at such time as it may appoint, pronounce judgment in the form of a resolution entered upon the journals of the senate.

History: En. Sec. 1512, Pen. C. 1895; re-en. Sec. 8984, Rev. C. 1907; re-en. Sec. 11680, R.C.M. 1921; Cal. Pen. C. Sec. 747; re-en. Sec. 11680, R.C.M. 1935; Sec. 94-5413, R.C.M. 1947; redes. 95-2813 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2813.

5-5-423. Judgment on conviction — how finalized. On the adoption of the resolution by a majority of the members present who voted on the question of acquittal or conviction, it becomes the judgment of the senate.

History: En. Sec. 1513, Pen. C. 1895; re-en. Sec. 8985, Rev. C. 1907; re-en. Sec. 11681, R.C.M. 1921; Cal. Pen. C. Sec. 748; re-en. Sec. 11681, R.C.M. 1935; Sec. 94-5414, R.C.M. 1947; redes. 95-2814 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2814.

5-5-424 through 5-5-430 reserved.

5-5-431. Nature of the judgment. The judgment may be that the defendant be suspended or that he be removed from office and disqualified to hold any office of honor, trust, or profit under the state.

History: En. Sec. 1514, Pen. C. 1895; re-en. Sec. 8986, Rev. C. 1907; re-en. Sec. 11682, R.C.M. 1921; Cal. Pen. C. Sec. 749; re-en. Sec. 11682, R.C.M. 1935; Sec. 94-5415, R.C.M. 1947; redes. 95-2815 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2815.

5-5-432. Effect of judgment of suspension. If judgment of suspension is given, the defendant, during the continuance thereof, is disqualified from receiving the salary, fees, or emoluments of the office.

History: En. Sec. 1515, Pen. C. 1895; re-en. Sec. 8987, Rev. C. 1907; re-en. Sec. 11683, R.C.M. 1921; Cal. Pen. C. Sec. 750; re-en. Sec. 11683, R.c.M. 1935; Sec. 94-5416, R.C.M. 1947; redes. 95-2816 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2816.

5-5-433. Criminal prosecution not barred. If the offense for which the defendant is convicted on impeachment is also the subject of an indictment or information, the indictment or information is not barred thereby.

History: En. Sec. 1518, Pen. C. 1895; re-en. Sec. 8990, Rev. C. 1907; re-en. Sec. 11686, R.C.M. 1921; Cal. Pen. C. Sec. 753; re-en. Sec. 11686, R.C.M. 1935; Sec. 94-5419, R.C.M. 1947; redes. 95-2819 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2819.

Cross-References

Crimes, Title 45.

Bribery and corrupt influence, Title 45, ch. 7, part 1.

Perjury and other falsification in official matters, Title 45, ch. 7, part 2.

Obstructing governmental operations, Title 45, ch. 7, part 3.

Official misconduct, 45-7-401.

CHAPTER 6
LEGISLATIVE INTERNS

Part 1 — Legislative Intern Program

5-6-101. Short title.
5-6-102. Establishment of program.
5-6-103. Term of service.
5-6-104. Number of interns — where from.
5-6-105. Selection by schools.
5-6-106. Intern qualifications.
5-6-107. Assignment of interns.
5-6-108. Legislative council to establish guidelines.
5-6-109. Interns responsible to sponsor.
5-6-110. Program not mandatory.
5-6-111. Funding not obligatory.

Part 1
Legislative Intern Program

Part Cross-References

Legislative Council, Title 5, ch. 11.

5-6-101. Short title. This chapter shall be known as the "Legislative Intern Act of 1974".

History: En. 43-720 by Sec. 1, Ch. 305, L. 1974; R.C.M. 1947, 43-720.

5-6-102. Establishment of program. It is the public policy of this state that there be a legislative intern program open to students attending the university of Montana-Missoula, Montana state university-Bozeman, Montana state university-Billings, Montana state university-northern, western Montana college of the university of Montana, and Montana tech of the university of Montana or a state-funded, 2-year postsecondary institution. A private college of higher education or a tribally controlled community college in the state may also establish an intern program for the purposes of this chapter.

History: En. 43-721 by Sec. 2, Ch. 305, L. 1974; amd. Sec. 17, Ch. 309, L. 1977; R.C.M. 1947, 43-721; amd. Sec. 5, Ch. 224, L. 1989; amd. Sec. 1, Ch. 225, L. 1995.

5-6-103. Term of service. Each legislative intern shall serve for a period to be specified by the legislative council prior to each regular legislative session.

History: En. 43-722 by Sec. 3, Ch. 305, L. 1974; R.C.M. 1947, 43-722; amd. Sec. 1, Ch. 104, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 104 at end substituted "a period to be specified by the legislative council prior to each regular legislative session" for "10 weeks during the regular session of the legislature".

Cross-References

Regular session — time and place of meeting, 5-2-103.

5-6-104. Number of interns — where from. All institutions referred to in 5-6-102 may have at least one intern. An additional five positions may be chosen from applications submitted to the legislative council.

History: En. 43-723 by Sec. 4, Ch. 305, L. 1974; R.C.M. 1947, 43-723.

5-6-105. Selection by schools. The legislative interns shall be named by the presidents of the several colleges and universities. The students so selected may be enrolled in any program offered by the college or university.

History: En. 43-724 by Sec. 5, Ch. 305, L. 1974; R.C.M. 1947, 43-724.

5-6-106. Intern qualifications. (1) The legislative interns must have the following qualifications:

(a) at least one course of "government" or its equivalent as a course of study at an institution of higher learning;

(b) attainment of at least the level of a junior at a 4-year institution of higher learning or attainment of at least the level of a sophomore at a 2-year postsecondary institution; and

(c) the necessary degree of scholastic achievement, leadership, and involvement in community affairs.

(2) Preference must be given to Montana high school graduates.

History: En. 43-725 by Sec. 6, Ch. 305, L. 1974; amd. Sec. 18, Ch. 309, L. 1977; R.C.M. 1947, 43-725; amd. Sec. 1, Ch. 72, L. 1993; amd. Sec. 2, Ch. 225, L. 1995.

5-6-107. Assignment of interns. Each legislative intern is assigned to a legislator by the legislative council.

History: En. 43-726 by Sec. 7, Ch. 305, L. 1974; R.C.M. 1947, 43-726.

5-6-108. Legislative council to establish guidelines. Each legislative intern is subject to guidelines established by the legislative council.

History: En. 43-727 by Sec. 8, Ch. 305, L. 1974; R.C.M. 1947, 43-727.

5-6-109. Interns responsible to sponsor. Each legislative intern is directly responsible to his or her legislator.

History: En. 43-728 by Sec. 9, Ch. 305, L. 1974; R.C.M. 1947, 43-728.

5-6-110. Program not mandatory. An institution of higher learning may choose not to participate in the legislative intern program.

History: En. 43-729 by Sec. 10, Ch. 305, L. 1974; R.C.M. 1947, 43-729.

5-6-111. Funding not obligatory. The legislature shall not, under any condition, because of this chapter be obligated to fund this internship program.

History: En. 43-730 by Sec. 12, Ch. 305, L. 1974; R.C.M. 1947, 43-730.

CHAPTER 7
LOBBYING

Part 1 — General Provisions—Licenses

5-7-101. Purposes of chapter — applicability.
5-7-102. Definitions.
5-7-103. Licenses — fees — eligibility — waiver.
5-7-104. Repealed.
5-7-105. Suspension of lobbying privileges.
5-7-106 and 5-7-107 reserved.
5-7-108. Inspection of applications and reports — issuance of orders of noncompliance.
5-7-109 and 5-7-110 reserved.
5-7-111. Commissioner to make rules.

Part 2 — Registration and Reports

5-7-201. Docket — contents.
5-7-202. Docket — public record.
5-7-203. Principal — name of lobbyist on docket.
5-7-204. Updating docket.
5-7-205. Repealed.
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5-7-207. Report to legislature.
5-7-208. Principals to file report.
5-7-209. Payments prohibited unless reported — penalty for failure to report or for false statement.
5-7-210. Reimbursement.
5-7-211. Governmental responses not lobbying payments.
5-7-212. Audit of lobbying reports.
5-7-213. Renumbered 2-2-106 by Code Commissioner, 1995.

Part 3 — Prohibitions—Enforcement

5-7-301. Prohibition of practice without license and registration.
5-7-302. Unprofessional conduct.
5-7-303. Repealed.
5-7-304. Repealed.
5-7-305. Penalties and enforcement.

Chapter Cross-References

Control of campaign practices, Title 13, ch. 37.

Agency, Title 28, ch. 10.

Offenses against public administration, Title 45, ch. 7.

Offenses against public order, Title 45, ch. 8, part 1.

Part 1
General Provisions — Licenses

5-7-101. Purposes of chapter — applicability. (1) The purposes of this chapter are to promote a high standard of ethics in the practice of lobbying, to prevent unfair and unethical lobbying practices, to provide for the licensing of lobbyists and the suspension or revocation of the licenses, to require elected officials to make public their business, financial, and occupational interests, and to require disclosure of the amounts of money spent for lobbying.

(2) Nothing in this chapter subjects an individual lobbying on his own behalf to any reporting requirements nor deprives an individual of the constitutional right to communicate with public officials.

History: En. Sec. 1, Ch. 157, L. 1959; amd. Sec. 19, Ch. 309, L. 1977; R.C.M. 1947, 43-801; amd. Sec. 1, I.M. No. 85, approved Nov. 4, 1980; amd. Sec. 1, Ch. 568, L. 1983; amd. Sec. 1, Ch. 498, L. 1991.

Cross-References

Freedom of speech and expression, Art. II, sec. 7, Mont. Const.

Right of participation, Art. II, sec. 8, Mont. Const.

5-7-102. Definitions. The following definitions apply in this chapter:

(1) "Business" means:

(a) a holding or interest whose fair market value is greater than $1,000, in a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, self-employed person, holding company, joint-stock company, receivership, trust, or other entity or property held in anticipation of profit, but does not include nonprofit organizations; and

(b) present or past employment from which benefits, including retirement allowances, are received.

(2) "Commissioner" means the commissioner of political practices.

(3) "Docket" means the register of lobbyists and principals maintained by the commissioner pursuant to 5-7-201.

(4) "Elected official" means a public official holding a state office filled by a statewide vote of all the electors of Montana or a state district office, including but not limited to legislators, public service commissioners, and district court judges. The term "official-elect" also applies to the offices.

(5) "Individual" means a human being.

(6) "Lobbying" means:

(a) the practice of promoting or opposing the introduction or enactment of legislation before the legislature or the members of the legislature by a person other than a member of the legislature or a public official; and

(b) the practice of promoting or opposing official action by any public official.

(7) "Lobbying for hire" includes activities of the officers, agents, attorneys, or employees of a principal who are paid, reimbursed, or retained by the principal and whose duties include lobbying. If an individual is reimbursed only for his personal living and travel expenses, which together are less than $1,000 per calendar year, that individual is not considered to be lobbying for hire.

(8) (a) "Lobbyist" means a person who engages in the practice of lobbying for hire.

(b) Lobbyist does not include:

(i) an individual acting solely on his own behalf; or

(ii) an individual working for the same principal as a licensed lobbyist if the individual does not have personal contact involving lobbying with a public official on behalf of his principal.

(c) Nothing in this section deprives an individual not lobbying for hire of the constitutional right to communicate with public officials.

(9) "Payment" means distribution, transfer, loan, advance, deposit, gift, or other rendering made or to be made of money, property, or anything of value.

(10) "Payment to influence official action" means any of the following types of payment:

(a) direct or indirect payment to a lobbyist by a principal, such as salary, fee, compensation, or reimbursement for expenses, excluding personal living expenses; or

(b) payment in support of or assistance to a lobbyist or a lobbying activity, including but not limited to the direct payment of expenses incurred at the request or suggestion of the lobbyist.

(11) "Person" means an individual, corporation, association, firm, partnership, state or local government or subdivision of state or local government, or other organization or group of persons.

(12) "Principal" means a person who employs a lobbyist.

(13) "Public official" means an individual, elected or appointed, acting in his official capacity for the state government. The term does not include those acting in a judicial or quasi-judicial capacity or performing ministerial acts.

(14) "Unprofessional conduct" means:

(a) violating any of the provisions of this chapter;

(b) instigating action by a public official for the purpose of obtaining employment;

(c) attempting to influence the action of a public official on a measure pending or to be proposed by:

(i) promising financial support; or

(ii) making public any unsubstantiated charges of improper conduct on the part of a lobbyist, a principal, or a legislator; or

(d) attempting to knowingly deceive a public official with regard to the pertinent facts of an official matter or attempting to knowingly misrepresent pertinent facts of an official matter to a public official.

History: En. Sec. 2, Ch. 157, L. 1959; R.C.M. 1947, 43-802; amd. Sec. 2, I.M. No. 85, approved Nov. 4, 1980; amd. Sec. 2, Ch. 568, L. 1983; amd. Sec. 2, Ch. 498, L. 1991.

5-7-103. Licenses — fees — eligibility — waiver. (1) Any adult of good moral character who is otherwise qualified under this chapter may be licensed as a lobbyist. The commissioner shall provide a license application form. The application form may be obtained from and must be filed in the office of the commissioner. Upon approval of the application and receipt of the license fee by the commissioner, a license must be issued that entitles the licensee to practice lobbying on behalf of one or more enumerated principals. The license fee is $50 for each lobbyist. Each license expires on December 31 of each even-numbered year or may be terminated at the request of the lobbyist. A lobbyist who believes that payment of the license fee may constitute a hardship may apply to the commissioner for a waiver of the fee required by this section. The commissioner may waive the license fee upon proof by the lobbyist that payment of the fee constitutes a hardship.

(2) (a) Except as provided in subsection (2)(b), an application may not be disapproved without affording the applicant a hearing. The hearing must be held and the decision entered within 10 days of the date of the filing of the application.

(b) An application may not be approved if a principal has failed to file reports required under 5-7-208.

(3) The fines and license fees collected under this chapter must be deposited in the state treasury.

(4) The commissioner may adopt rules to implement the waiver provisions of subsection (1).

History: En. Sec. 3, Ch. 157, L. 1959; amd. Sec. 3, Ch. 248, L. 1965; amd. Sec. 20, Ch. 309, L. 1977; R.C.M. 1947, 43-803(1); amd. Sec. 3, I.M. No. 85, approved Nov. 4, 1980; amd. Sec. 1, Ch. 91, L. 1991; amd. Sec. 3, Ch. 498, L. 1991; amd. Sec. 1, Ch. 18, Sp. L. November 1993.

Cross-References

Licenses — Montana Administrative Procedure Act, 2-4-631.

Prohibition of practice without license and registration, 5-7-301.

Discrimination in issuance prohibited, 49-3-204.

5-7-104. Repealed. Sec. 20, Initiative No. 85, 1980.

History: En. Sec. 3, Ch. 157, L. 1959; amd. Sec. 3, Ch. 248, L. 1965; amd. Sec. 20, Ch. 309, L. 1977; R.C.M. 1947, 43-803(2).

5-7-105. Suspension of lobbying privileges. No lobbyist whose license has been suspended and no person who has been adjudged guilty of a violation of any provision of this chapter may engage in lobbying for hire until that person has been reinstated to the practice and duly licensed.

History: En. Sec. 3, Ch. 157, L. 1959; amd. Sec. 3, Ch. 248, L. 1965; amd. Sec. 20, Ch. 309, L. 1977; R.C.M. 1947, 43-803(3); amd. Sec. 4, I.M. No. 85, approved Nov. 4 , 1980.

5-7-106 and 5-7-107 reserved.

5-7-108. Inspection of applications and reports — issuance of orders of noncompliance. (1) Each application and report filed with the commissioner must be inspected within 10 days after it is filed. If a person has not satisfied the provisions of this chapter, the commissioner shall immediately notify the person of the noncompliance. An order of noncompliance may be issued when:

(a) it is determined that an application or report filed with the commissioner does not conform to the requirements of this chapter; or

(b) a person has failed to file an application or report required by law.

(2) The person shall submit the necessary information within 5 days after receiving the notice of noncompliance. Upon failure to submit the required information within 5 days, the commissioner may initiate a civil or criminal action pursuant to the procedures contained in 5-7-305.

History: En. Sec. 3, Ch. 91, L. 1991.

5-7-109 and 5-7-110 reserved.

5-7-111. Commissioner to make rules. (1) The commissioner shall promulgate and publish rules necessary to carry out the provisions of this chapter in conformance with the Montana Administrative Procedure Act and, in particular, shall provide rules necessary to allocate salary, expenses, and any other payments between lobbying activities and other activities not connected with lobbying for any person whose activities are not solely limited to lobbying.

(2) Such rules shall be designed to effect and promote the purposes of this chapter, express or implied. Such rules shall be as simple and easily complied with as possible.

History: En. Sec. 17, I.M. No. 85, approved Nov. 4, 1980.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Part 2
Registration and Reports

5-7-201. Docket — contents. The commissioner shall make available to the public the information required by this chapter, including but not limited to the name and business address of each lobbyist, the name and business address of his principal, and the subject or subjects to which the employment relates or a statement that the employment relates to all matters in which the principal has an interest. The docket entry for each principal must also indicate the date of receipt of the principal's lobbying reports as required by 5-7-208.

History: En. Sec. 5, Ch. 157, L. 1959; R.C.M. 1947, 43-805(part); amd. Sec. 5, I.M. No. 85, approved Nov. 4, 1980; amd. Sec. 2, Ch. 91, L. 1991.

5-7-202. Docket — public record. Such docket shall be a public record and open to the inspection of any individual upon demand at any time during the regular business hours of the office of the commissioner.

History: En. Sec. 5, Ch. 157, L. 1959; R.C.M. 1947, 43-805(part); amd. Sec. 6, I.M. No. 85, approved Nov. 4, 1980.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records generally, Title 2, ch. 6, part 1.

5-7-203. Principal — name of lobbyist on docket. Every principal who employs any lobbyist shall within 1 week after such employment cause the name of said lobbyist to be entered upon the docket. It shall also be the duty of the lobbyist to enter his name upon the docket. Upon the termination of such employment, such fact may be entered opposite the name of the lobbyist either by the lobbyist or the principal.

History: En. Sec. 4, Ch. 157, L. 1959; R.C.M. 1947, 43-804; amd. Sec. 8, Ch. 3, L. 1985.

5-7-204. Updating docket. Any principal employing any lobbyist shall, when further subjects of legislation are introduced or arise which such lobbyist is to promote or oppose, make or cause to be made additional entries in the docket stating such employment so that the docket will show at all times all subjects of legislation in relation to which the lobbyist is employed or the general statement provided in 5-7-201.

History: En. Sec. 5, Ch. 157, L. 1959; R.C.M. 1947, 43-805(2).

5-7-205. Repealed. Sec. 20, Initiative No. 85, 1980.

History: En. Sec. 5, Ch. 157, L. 1959; R.C.M. 1947, 43-805(3).

5-7-206. Repealed. Sec. 20, Initiative No. 85, 1980.

History: En. Sec. 6, Ch. 157, L. 1959; amd. Sec. 21, Ch. 309, L. 1977; R.C.M. 1947, 43-806(2).

5-7-207. Report to legislature. Beginning with the first Tuesday following the beginning of any regular or special session of the legislature and on the first Tuesday of every month thereafter during which the legislature is in session, the commissioner shall make available from the commissioner's records a report to each member of each house of the legislature containing the names of lobbyists registered under this chapter, not previously reported, the names of the principals whom they represent as lobbyists, and the subjects of legislation in which each principal is interested.

History: En. Sec. 5, Ch. 157, L. 1959; R.C.M. 1947, 43-805(part); amd. Sec. 7, I.M. No. 85, approved Nov. 4, 1980; amd. Sec. 13, Ch. 349, L. 1993.

5-7-208. Principals to file report. (1) A principal subject to this chapter shall file with the commissioner a report of payments made for the purpose of lobbying.

(2) If payments are made solely to influence legislative action, a report must be made:

(a) by February 15th of any year the legislature is in session and must include all payments made in that calendar year prior to February 1;

(b) by the 15th day of the calendar month following a calendar month in which the principal spent $5,000 or more and must include all payments made during the prior calendar month; and

(c) no later than 30 days following adjournment of a legislative session and must include all payments made during the session, except as previously reported.

(3) If payments are made to influence any other official action by a public official or made to influence other action and legislative action, a report must be made:

(a) by February 15th of the calendar year following the payments and must include all payments made during the prior calendar year; and

(b) by the 15th day of the calendar month following a calendar month in which the principal spent $5,000 or more and must include all payments made during the prior calendar month.

(4) If no payments are made during the reporting periods provided in subsections (2)(a), (2)(c), and (3)(a) above, the principal shall file a report stating that fact.

(5) Each report filed under this section must:

(a) list all payments for lobbying in each of the following categories:

(i) printing;

(ii) advertising, including production costs;

(iii) postage;

(iv) travel expenses;

(v) salaries and fees, including allowances, rewards, and contingency fees;

(vi) entertainment, including all foods and refreshments;

(vii) telephone and telegraph; and

(viii) other office expenses;

(b) itemize, identifying the payee and the beneficiary:

(i) each separate payment conferring $25 or more benefit to any public official when the payment was made for the purpose of lobbying; and

(ii) each separate payment conferring $100 or more benefit to more than one public official, regardless of individual benefit when the payment was made for the purpose of lobbying, except that in regard to a dinner or other function to which all senators or all representatives have been invited, the beneficiary may be listed as all members of that group without listing separately each person who attended;

(c) list each contribution and membership fee which amounts to $250 or more when aggregated over the period of 1 calendar year paid to the principal for the purpose of lobbying, with the full address of each payer and the issue area, if any, for which the payment was earmarked;

(d) list each official action on which the principal or his agents exerted a major effort to support, oppose, or modify, together with a statement of the principal's position for or against the action; and

(e) be kept by the commissioner for a period of 10 years.

History: En. Sec. 11, I.M. No. 85, approved Nov. 4, 1980; amd. Sec. 3, Ch. 568, L. 1983; amd. Sec. 4, Ch. 91, L. 1991; amd. Sec. 4, Ch. 498, L. 1991.

5-7-209. Payments prohibited unless reported — penalty for failure to report or for false statement. A principal may not make payments to influence official action by any public official unless that principal files the reports required under this chapter. A principal who fails to file a required report is subject to the penalty provided in 5-7-305 as well as any civil action provided for in that section. A principal who knowingly files a false, erroneous, or incomplete statement commits the offense of unsworn falsification to authorities.

History: En. Sec. 12, I.M. No. 85, approved Nov. 4, 1980.

Cross-References

Offense of unsworn falsification to authorities — misdemeanor, 45-7-203.

5-7-210. Reimbursement. Whenever a lobbyist invites a public official to attend a function which the lobbyist or his principal has fully or partially funded or sponsored, or whenever a lobbyist offers a public official a gift, the lobbyist must, upon request, supply the recipient public official with the benefit's true or estimated cost and allow the public official to reimburse. Such expenditures must be itemized in the principal's reports with a notation "reimbursed by benefactee".

History: En. Sec. 13, I.M. No. 85, approved Nov. 4, 1980.

5-7-211. Governmental responses not lobbying payments. Budget preparation or response to requests of a house or committee of the legislature by any governmental entity shall not be considered lobbying payments for the purposes of this chapter.

History: En. Sec. 14, I.M. No. 85, approved Nov. 4, 1980.

5-7-212. Audit of lobbying reports. (1) The commissioner may audit the reports filed under 5-7-208 and shall investigate any irregularities and report any apparent violations of this chapter to the attorneys having authority to prosecute. The lobbyist is required to provide and the principal is required to obtain and keep for a period of 3 years from the date of filing all records supporting the reports filed under 5-7-208.

(2) All records under subsection (1) must be open to inspection on request of the commissioner or an attorney having authority to prosecute violations of this chapter. The commissioner and the attorneys are given the power to:

(a) subpoena and compel attendance;

(b) issue enforceable civil investigative demands;

(c) take evidence; and

(d) require the production of any books, correspondence, memoranda, bank account statements, or other records which are relevant or material for the purpose of conducting any investigation pursuant to the provisions of this chapter.

History: En. Sec. 15, I.M. No. 85, approved Nov. 4, 1980; amd. Sec. 5, Ch. 91, L. 1991; amd. Sec. 5, Ch. 498, L. 1991.

5-7-213. Renumbered 2-2-106 by Code Commissioner, 1995.

Part 3

Prohibitions — Enforcement

5-7-301. Prohibition of practice without license and registration. (1) No individual may practice as a lobbyist unless that individual has been licensed under 5-7-103 and listed on the docket as employed in respect to all the matters he is promoting or opposing.

(2) No principal may directly or indirectly authorize or permit any lobbyist employed by that principal to practice lobbying until the lobbyist is duly licensed and the names of the lobbyist and the principal are duly entered on the docket.

History: En. Sec. 6, Ch. 157, L. 1959; amd. Sec. 21, Ch. 309, L. 1977; R.C.M. 1947, 43-806(part); amd. Sec. 8, I.M. No. 85, approved Nov. 4, 1980.

5-7-302. Unprofessional conduct. No lobbyist or principal shall engage in or directly or indirectly authorize any unprofessional conduct.

History: En. Sec. 6, Ch. 157, L. 1959; amd. Sec. 21, Ch. 309, L. 1977; R.C.M. 1947, 43-806(part); amd. Secs. 9, 10, I.M. No. 85, approved Nov. 4, 1980; amd. Sec. 4, Ch. 568, L. 1983.

5-7-303. Repealed. Sec. 20, Initiative No. 85, 1980.

History: En. Sec. 6, Ch. 157, L. 1959; amd. Sec. 21, Ch. 309, L. 1977; R.C.M. 1947, 43-806(3).

5-7-304. Repealed. Sec. 20, Initiative No. 85, 1980.

History: En. Sec. 7, Ch. 157, L. 1959; R.C.M. 1947, 43-807.

5-7-305. Penalties and enforcement. (1) Any person violating the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail not more than 6 months or by a fine not exceeding $200, or both.

(2) Any person who violates any of the provisions of this chapter shall be subject to civil penalties of not less than $250 and not more than $7,500 according to the discretion of the district court, as court of original jurisdiction. A lobbyist who violates any of the provisions of this chapter shall have his license suspended or revoked according to the discretion of the court. Any public official holding elective office adjudged in violation of the provisions of this act is additionally subject to recall under Montana Recall Act, 2-16-601, et seq., and such violation shall constitute an additional basis for recall to those mentioned in 2-16-603(3).

(3) The attorney general, commissioner, or the county attorney of the county in which the violation takes place may bring criminal or civil actions in the name of the state for any appropriate criminal or civil remedy.

(4) If a prosecution is undertaken by the commissioner or any county attorney, all costs associated with the prosecution shall be paid by the state of Montana.

(5) (a) Any individual who has notified the commissioner, the attorney general, and the appropriate county attorney in writing that there is reason to believe that some portion of this chapter is being violated may himself bring in the name of the state an action (hereinafter referred to as a citizen's action) authorized under this chapter if:

(i) the attorney general and the appropriate county attorney have failed to commence an action hereunder within 40 days after such notice; and

(ii) said attorneys then fail to commence an action within 10 days after a written notice delivered to them advising them that a citizen's action will be brought if they do not bring an action.

(b) Each notification shall toll the statute of limitations applicable until the expiration of the waiting period.

(c) If the individual who brings the citizen's action prevails, he shall be entitled to be reimbursed by the state of Montana for costs and attorney's fees incurred; provided that in the case of a citizen's action which is dismissed and which the court also finds was brought without reasonable cause, the court may order the individual commencing the action to pay all costs of trial and reasonable attorney's fees incurred by the defendant.

(6) No civil action may be brought under this section more than 3 years after the occurrence of the facts which give rise to the action.

(7) All civil penalties imposed pursuant to this section shall be deposited in the state general fund.

(8) A hearing under this chapter shall be held by the court unless the defendant-licensee demands a jury trial. The trial shall be held as soon as possible but at least 20 days after the filing of the charges and shall take precedence over all other matters pending before the court.

(9) If the court finds for the plaintiff, judgment shall be rendered revoking or suspending the license and the clerk of court shall file a certified copy of the judgment with the commissioner.

History: (1)En. Sec. 8, Ch. 157, L. 1959; R.C.M. 1947, 43-808; (2) thru (9)En. Sec. 18, I.M. No. 85, approved Nov. 4, 1980; amd. Sec. 6, Ch. 91, L. 1991.

CHAPTERS 8 THROUGH 10

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CHAPTER 11

LEGISLATIVE COUNCIL AND PUBLICATION OF LAWS

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Chapter Cross-References

Publication and updating of MCA, Title 1, ch. 11.

Legislative Council to receive copies and revisions of ARM, 2-4-313.

Copy of approved ballot issues to be sent to Legislative Services Division, 13-27-504.

Part 1

Composition — Powers and Duties — Personnel

Part Cross-References

Code Commissioner subject to supervision by Legislative Council, 1-11-203.

Compensation and expenses, 5-2-302.

Selection and assignment of interim studies, 5-5-217.

5-11-101. Appointment and composition of council. (1) There is a legislative council that consists of:

(a) the speaker of the house, the minority leader of the house, and four members chosen by the speaker of the house, no more than two of whom may be of the same political party; and

(b) the president of the senate, the minority leader of the senate, and four members chosen by the committee on committees, no more than two of whom may be of the same political party.

(2) No more than three members of each house may be of the same political party.

History: En. Sec. 1, Ch. 34, L. 1957; amd. Sec. 1, Ch. 431, L. 1973; amd. Sec. 10, Ch. 309, L. 1977; R.C.M. 1947, 43-709(1); amd. Sec. 16, Ch. 545, L. 1995.

5-11-102. Term. Membership on the council is for 2 years while the member remains qualified and until a successor is appointed and qualified. Members required to be appointed by leadership under 5-11-101 must be appointed immediately following organization of the senate and the house of representatives as provided in 5-2-212 and 5-2-213.

History: En. Sec. 1, Ch. 34, L. 1957; amd. Sec. 1, Ch. 431, L. 1973; amd. Sec. 10, Ch. 309, L. 1977; R.C.M. 1947, 43-709(2); amd. Sec. 17, Ch. 545, L. 1995.

Cross-References

Time and place of legislative sessions, 5-2-103.

5-11-103. Vacancies. A vacancy on the legislative council must be filled by the selection of another member by the same method as the original appointment.

History: En. Sec. 1, Ch. 34, L. 1957; amd. Sec. 1, Ch. 431, L. 1973; amd. Sec. 10, Ch. 309, L. 1977; R.C.M. 1947, 43-709(3); amd. Sec. 18, Ch. 545, L. 1995.

5-11-104. Officers — rules of procedure — records. The legislative council shall organize immediately following appointment by electing one of its members as its chairman and by electing such other officers from among its membership as the council may deem desirable. The council is empowered to adopt rules of procedure and to make all arrangements for its meetings and to carry out the purpose for which it is created. The council is directed to keep accurate records of its activities and proceedings.

History: En. Sec. 7, Ch. 34, L. 1957; amd. Sec. 7, Ch. 431, L. 1973; R.C.M. 1947, 43-715.

5-11-105. Powers and duties of council. (1) The legislative council shall:

(a) employ and, in accordance with the rules for classification and pay established as provided in this section, set the salary of an executive director of the legislative services division, who serves at the pleasure of and is responsible to the legislative council;

(b) with the concurrence of the legislative audit committee and the legislative finance committee, adopt rules for classification and pay of legislative branch employees, other than those of the office of consumer counsel;

(c) with the concurrence of the legislative audit committee and the legislative finance committee, adopt rules governing personnel management of branch employees, other than those of the office of consumer counsel;

(d) adopt procedures to administer legislator claims for reimbursements authorized by law for interim activity; and

(e) perform other duties assigned by law.

(2) If a question of statewide importance arises when the legislature is not in session and a legislative committee has not been assigned to consider the question, the legislative council shall assign the question to an appropriate subcommittee as provided in Title 5, chapter 5, part 2, or to the appropriate statutorily created committee.

History: En. Sec. 2, Ch. 34, L. 1957; amd. Sec. 2, Ch. 431, L. 1973; amd. Sec. 11, Ch. 309, L. 1977; R.C.M. 1947, 43-710; amd. Sec. 3, Ch. 596, L. 1979; amd. Sec. 1, Ch. 1, L. 1987; amd. Sec. 19, Ch. 545, L. 1995.

Cross-References

Legislative Services Division to provide technical and clerical services to Districting and Apportionment Commission, 5-1-106.

Selection and assignment of interim studies, 5-5-217.

5-11-106. Authority to investigate and examine. The legislative services division, on behalf of standing and select committees and subcommittees, may investigate and examine state governmental activities and may examine and inspect all records, books, and files of any department, agency, commission, board, or institution of the state of Montana.

History: En. Sec. 4, Ch. 34, L. 1957; amd. Sec. 4, Ch. 431, L. 1973; R.C.M. 1947, 43-712; amd. Sec. 20, Ch. 545, L. 1995.

5-11-107. Powers relating to hearings. (1) In the discharge of its duties or on behalf of statutory committees or subcommittees, the legislative council may hold hearings, administer oaths, issue subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, and cause depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in district court.

(2) If a person disobeys a subpoena issued by the council or if a witness refuses to testify on any matters regarding which the witness may be lawfully interrogated, the district court of any county shall, on application of the legislative council, compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from a district court or a refusal to testify in the district court.

History: En. Sec. 5, Ch. 34, L. 1957; amd. Sec. 5, Ch. 431, L. 1973; amd. Sec. 14, Ch. 309, L. 1977; R.C.M. 1947, 43-713; amd. Sec. 21, Ch. 545, L. 1995.

Cross-References

Witnesses before Legislature, Title 5, ch. 5, part 1.

Montana Rules of Civil Procedure, Title 25, ch. 20.

5-11-108 through 5-11-110 reserved.

5-11-111. Legislative services division. There is a legislative services division under the direction of an executive director employed by the legislative council under 5-11-105. The executive director may engage personnel and consultants to fulfill the duties of the legislative services division within the limits of appropriations to the legislative services division. The executive director shall fix the compensation of the employees of the legislative services division in accordance with the rules for classification and pay adopted by the legislative council.

History: En. Sec. 3, Ch. 34, L. 1957; amd. Sec. 3, Ch. 431, L. 1973; amd. Sec. 1, Ch. 30, L. 1974; effective date amd. Sec. 1, Ch. 12, L. 1975; amd. Sec. 12, Ch. 309, L. 1977; R.C.M. 1947, 43-711(1); amd. Sec. 22, Ch. 545, L. 1995.

Cross-References

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

5-11-112. Functional organization and responsibilities. (1) The legislative council may establish a functional organization within the legislative services division in order to effectively and efficiently carry out all of the responsibilities delegated to the division by law or legislative rule. The responsibilities of the legislative services division include the following:

(a) document services:

(i) bill drafting and preparation for introduction;

(ii) engrossing and enrolling;

(iii) distribution of legislative bills and information;

(iv) coordination of legislative printing; and

(v) publication of legislative records;

(b) research and reference services:

(i) general and specialized legislative research; and

(ii) legislative reference and information;

(c) legal services:

(i) legal review of draft bills;

(ii) legal counseling on legislative matters;

(iii) legal support for consolidated entities; and

(iv) support for the functions of the code commissioner provided in 1-11-201;

(d) committee services:

(i) research, legal, and administrative staff support for consolidated committees as assigned, including support for interim committees organized under Title 5, chapter 5, part 2; and

(ii) research and legal support for legislative standing and select committees;

(e) management and business services:

(i) financial records;

(ii) claims and payrolls;

(iii) coordination of procurement of printing, supplies, and equipment; and

(iv) maintenance of property inventories;

(f) personnel and administrative services:

(i) rules for classification and pay; and

(ii) personnel and administrative policies; and

(g) information technology services:

(i) legislative branch network support services;

(ii) application support and development;

(iii) communications support and coordination; and

(iv) information technology planning.

(2) The responsibilities of the legislative services division must be fulfilled collaboratively with consolidated entities whenever the efficient operation of the legislative branch is served.

History: En. Sec. 3, Ch. 34, L. 1957; amd. Sec. 3, Ch. 431, L. 1973; amd. Sec. 1, Ch. 30, L. 1974; effective date amd. Sec. 1, Ch. 12, L. 1975; amd. Sec. 12, Ch. 309, L. 1977; R.C.M. 1947, 43-711(2); amd. Sec. 1, Ch. 608, L. 1989; amd. Sec. 2, Ch. 302, L. 1993; amd. Sec. 23, Ch. 545, L. 1995.

5-11-113 and 5-11-114 reserved.

5-11-115. Renumbered 2-17-805. Sec. 9, Ch. 476, L. 1997.

5-11-116. Renumbered 2-17-825. Sec. 9, Ch. 476, L. 1997.

Part 2

Dissemination of Laws and Proceedings

Part Cross-References

Duties of Secretary of State, Art. VI, sec. 4, Mont. Const.

Effect of Legislature's actions, Title 1, ch. 2, part 2.

Publication and updating of MCA — Code Commissioner, Title 1, ch. 11.

Custody of legislative acts and records — Secretary of State, 2-6-111, 2-15-401.

Department of Administration to assist in legislative records management, 2-6-203.

Legislative Branch — bills, Title 5, ch. 4.

Tampering with public records or information, 45-7-208.

5-11-201. Journals — how authenticated — filing. The journal of the senate must be authenticated by the signature of the president and the journal of the house of representatives by the signature of the speaker. Each authenticated journal must be filed with the secretary of state. A copy of each authenticated journal must be filed with the legislative services division.

History: En. Sec. 203, Pol. C. 1895; re-en. Sec. 70, Rev. C. 1907; re-en. Sec. 68, R.C.M. 1921; Cal. Pol. C. Sec. 256; re-en. Sec. 68, R.C.M. 1935; R.C.M. 1947, 43-304; amd. Sec. 2, Ch. 22, Sp. L. November 1993; amd. Sec. 24, Ch. 545, L. 1995.

Cross-References

Custody of journals, 2-6-111.

5-11-202. Printing of session laws. The legislative services division shall deliver to the appropriate printer, at the earliest practicable day after the final adjournment of each session of the legislature, copies of all laws and resolutions passed or adopted during the session. The session laws must be delivered to the appropriate printer in the form provided for in 5-11-205 and 5-11-206.

History: En. 43-711.1 by Sec. 3, Ch. 96, L. 1973; R.C.M. 1947, 43-711.1; amd. Sec. 2, Ch. 138, L. 1979; amd. Sec. 3, Ch. 22, Sp. L. November 1993; amd. Sec. 25, Ch. 545, L. 1995.

5-11-203. Distribution of session laws — inspection of journals. (1) Immediately after the session laws are published, the legislative services division shall distribute them.

(2) The legislative services division shall make the house and senate journals available for inspection or copying by the public as provided in Title 2, chapter 6, part 1. The legislative services division may publish the journals in an electronic format.

(3) The following entities may receive the number of copies of session laws listed at no cost:

(a) to the library of congress, eight copies;

(b) to the state library, two copies;

(c) to the state historical library, two copies;

(d) to the state law librarian, four copies for the use of the library and additional copies as may be required for exchange with libraries and institutions maintained by other states and territories and public libraries;

(e) to the library of each custodial institution, one copy;

(f) to each Montana member of congress, each United States district judge in Montana, each of the judges of the state supreme and district courts, and each of the state officers as defined in 2-2-102, one copy;

(g) to any agency, board, commission, or office of the state, other than a state officer, and to any other subdivision of the state upon request and approval by the legislative council, one copy;

(h) to each member of the legislature, the secretary of the senate, and the chief clerk of the house of representatives from the session at which the laws were adopted, one copy;

(i) to each of the community college districts of the state, as defined in 20-15-101, and each unit of the Montana university system, one copy;

(j) to each county clerk, one copy for the use of the county; and

(k) to each county attorney and to each clerk of a district court, one copy.

History: En. Sec. 1, Ch. 86, L. 1907; re-en. Sec. 155, Rev. C. 1907; amd. Sec. 1, Ch. 126, L. 1921; re-en. Sec. 135, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1929; re-en. Sec. 135, R.C.M. 1935; amd. Sec. 1, Ch. 46, L. 1937; Sec. 82-2203, R.C.M. 1947; redes. 43-711.2 and amd. by Sec. 4, Ch. 96, L. 1973; amd. Sec. 13, Ch. 309, L. 1977; R.C.M. 1947, 43-711.2; amd. Sec. 1, Ch. 65, L. 1979; amd. Sec. 3, Ch. 138, L. 1979; amd. Sec. 18, Ch. 575, L. 1981; amd. Sec. 2, Ch. 3, L. 1983; amd. Sec. 4, Ch. 22, Sp. L. November 1993; amd. Sec. 26, Ch. 545, L. 1995; amd. Sec. 22, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (3)(f) deleted reference to subsection (8) of 2-2-102. Amendment effective March 12, 1997.

5-11-204. Secretary of state to assign chapter numbers to new laws. It shall be the duty of the secretary of state, when bills passed by any legislature of Montana are filed in his office as directed in 5-4-302 and 5-4-305, to note thereon the date of filing and to number such bills, except resolutions, in the order of their reception by him, chapter 1 and upwards, using Arabic numerals.

History: En. Sec. 1, Ch. 17, L. 1903; re-en. Sec. 162, Rev. C. 1907; re-en. Sec. 141, R.C.M. 1921; re-en. Sec. 141, L. 1935; R.C.M. 1947, 82-2209; amd. Sec. 4, Ch. 138, L. 1979; amd. Sec. 1, Ch. 95, L. 1989.

5-11-205. Publication of laws — format. (1) The legislative services division shall publish all laws and resolutions passed or adopted by each session of the legislature in a publication to be known as the Laws of Montana.

(2) Laws of each session must be printed in the Laws of Montana in the order that they have been filed in the office of the secretary of state with the chapter number assigned by the secretary of state as the heading. The chapter number must also appear as part of each page heading. In all laws containing amendments to an existing law, the new parts designated in the act by underlining must be printed in italics in the Laws of Montana and deleted provisions must be shown as stricken. The senate or house bill number may be omitted from each act.

(3) Reference to the laws of a legislative session may be made as follows: "Chapter.... (giving number), Laws of.... (giving the year enacted)".

(4) Resolutions adopted by each session of the legislature must be printed in a separate section of the Laws of Montana with the type of resolution and its number as a heading.

(5) The legislative services division shall also publish in the Laws of Montana the indexes required by 5-11-206.

History: En. Sec. 2, Ch. 17, L. 1903; re-en. Sec. 163, Rev. C. 1907; re-en. Sec. 142, R.C.M. 1921; re-en. Sec. 142, L. 1935; amd. Sec. 1, Ch. 10, L. 1939; Sec. 82-2210, R.C.M. 1947; amd. Sec. 1, Ch. 59, L. 1973; redes. 43-711.3 and amd. by Sec. 5, Ch. 96, L. 1973; R.C.M. 1947, 43-711.3; amd. Sec. 5, Ch. 138, L. 1979; amd. Sec. 2, Ch. 95, L. 1989; amd. Sec. 27, Ch. 545, L. 1995.

Cross-References

Publication of Montana Code Annotated, Title 1, ch. 11, part 3.

5-11-206. Index — list. (1) The legislative services division shall prepare a suitable index of all the laws and resolutions passed or adopted at each session of the legislature. The index must be a thorough index of the laws and resolutions and of each subject contained in or covered by the laws and resolutions, together with a cross-index to assist in readily finding any subject contained in each volume. A separate index must be prepared for appropriation bills passed by each session of the legislature.

(2) For the purpose of uniformity in indexes, the index of each succeeding publication of the session laws must conform as nearly as practicable with those of the volumes preceding it.

(3) There must also be prepared for each publication of the session laws a "code sections affected list" showing what sections of the Montana Code Annotated have been amended or repealed by any laws enacted by that session of the legislature.

History: En. Sec. 11, Ch. 153, L. 1949; amd. Sec. 1, Ch. 128, L. 1973; R.C.M. 1947, 44-411; amd. Sec. 6, Ch. 138, L. 1979; amd. Sec. 3, Ch. 370, L. 1987; amd. Sec. 3, Ch. 95, L. 1989; amd. Sec. 28, Ch. 545, L. 1995.

5-11-207. Description of county boundaries included in session laws. The legislative services division shall include in the published session laws a description of the county boundaries of any new counties of the state created by petition and election, commencing with counties created after January 1, 1921, by inserting in each set of session laws new counties that have been created since the publication of the laws of the previous session.

History: En. Sec. 1, Ch. 67, L. 1921; re-en. Sec. 143, R.C.M. 1921; re-en. Sec. 143, R.C.M. 1935; Sec. 82-2211, R.C.M. 1947; redes. 43-711.4 and amd. by Sec. 6, Ch. 96, L. 1973; R.C.M. 1947, 43-711.4; amd. Sec. 7, Ch. 138, L. 1979; amd. Sec. 29, Ch. 545, L. 1995.

Cross-References

Creation and organization of new counties, Title 7, ch. 2, parts 22 and 23.

5-11-208. Expenses. The expenses incurred by the legislative services division in carrying into effect 5-11-202, 5-11-203, and 5-11-205 through 5-11-207 must be paid out of money appropriated for that purpose.

History: En. Sec. 409, Pol. C. 1895; re-en. Sec. 164, Rev. C. 1907; re-en. Sec. 144, R.C.M. 1921; re-en. Sec. 144, R.C.M. 1935; amd. Sec. 30, Ch. 97, L. 1961; Sec. 82-2212, R.C.M. 1947; redes. 43-711.5 and amd. by Sec. 7, Ch. 96, L. 1973; R.C.M. 1947, 43-711.5; amd. Sec. 8, Ch. 138, L. 1979; amd. Sec. 4, Ch. 370, L. 1987; amd. Sec. 30, Ch. 545, L. 1995.

5-11-209. Codes — availability to legislators — reserved for use by legislative committees. (1) When it becomes available after each regular legislative session, each legislator is entitled to purchase for $10 each one set of the printed and bound Montana Code Annotated statute text and histories and one Montana Code Annotated that is produced for sale to the public on computer-readable media, such as CD-ROM.

(2) The legislative services division shall reserve 50 sets of the printed versions of Montana Code Annotated statute text and histories for the use of the standing and select committees of the legislature.

(3) Costs associated with providing code sets as required by this section must be paid out of the state special revenue fund account established under 1-11-301.

History: En. Sec. 1, Ch. 382, L. 1981; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 4, Ch. 412, L. 1987; amd. Sec. 1, Ch. 23, L. 1995; amd. Sec. 31, Ch. 545, L. 1995.

5-11-210. Clearinghouse for reports to legislature. (1) For the purposes of this section, "report" means a report required by law to be given to or filed with the legislature.

(2) On or before September 1 of each year preceding the convening of a regular session of the legislature, an entity required to report to the legislature shall provide, in writing, to the executive director of the legislative services division:

(a) the final title of the report;

(b) an abstract or description of the contents of the report, not to exceed 100 words;

(c) a recommendation on how many copies of the report should be provided to the legislature;

(d) the reasons why the number of copies recommended is, in the opinion of the reporting entity, the appropriate number of copies; and

(e) an estimated cost for each copy of the report.

(3) After considering all of the information available about the report, including the number of legislators requesting copies of the report pursuant to subsection (7), the legislative council or the executive director shall, in writing, direct the reporting entity to provide a specific number of copies. The number of copies required is at the sole discretion of the legislative council. The legislative council or the executive director may require the reporting entity to mail the copies of the report.

(4) The legislative council may require that the report be submitted in an electronic format usable on the legislature's current computer hardware, in a microform, such as microfilm or microfiche, or in a CD-ROM format, meaning compact disc read-only memory.

(5) Costs of preparing and distributing a report to the legislature, including writing, printing, postage, distribution, and all other costs, accrue to the reporting agency. Costs incurred in meeting the requirements of this section may not accrue to the legislative services division.

(6) The executive director of the legislative services division shall cause to be prepared a list of all reports required to be presented to the legislature from the list of titles received under subsection (2).

(7) The executive director shall, as soon as possible following a general election, mail to each holdover senator, senator-elect, and representative-elect a list of the titles of the reports, along with the abstracts prepared pursuant to subsection (2)(b). The list must include a form on which each member or member-elect receiving the list may indicate the report or reports that the member or member-elect would like to receive.

(8) The executive director of the legislative services division shall make copies of reports requested pursuant to subsection (7) available to those members or members-elect by either requiring that copies be mailed pursuant to subsection (3) or by delivering copies of the reports during the first week of the legislative session.

(9) The executive director of the legislative services division may keep as many copies of a report as are necessary and discard the rest.

(10) The procedure outlined in this section may also be used for a report required to be made to the legislature under the Multistate Tax Compact contained in 15-1-601, the Vehicle Equipment Safety Compact contained in 61-2-201, the Multistate Highway Transportation Agreement contained in 61-10-1101, or the Western Interstate Nuclear Compact contained in 90-5-201.

History: En. Sec. 1, Ch. 112, L. 1991; amd. Sec. 5, Ch. 7, L. 1993; amd. Sec. 1, Ch. 40, L. 1993; amd. Sec. 1, Ch. 274, L. 1993; amd. Sec. 1, Ch. 349, L. 1993; amd. Sec. 23, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in five places, throughout section, substituted "legislative services division" for "legislative council". Amendment effective March 12, 1997.

5-11-211. Definitions. For the purposes of this part, the following definitions apply:

(1) "One complete set" means one copy of each item of the proceedings of a session, regular or special, of the legislature.

(2) "Person" means any person, firm, corporation, or association.

(3) "Proceedings of the legislature" means status sheets, daily journals, reproduced bills, reproduced resolutions, printed bills, printed resolutions, and amendments thereto, together with such other related documents as the legislative council may choose to include.

(4) "Session Laws" for a particular year means the laws and resolutions passed or adopted by that year's session of the legislature.

History: En. Sec. 1, Ch. 223, L. 1959; amd. Sec. 1, Ch. 12, L. 1973; amd. Sec. 1, Ch. 292, L. 1974; R.C.M. 1947, 43-901; amd. Sec. 9, Ch. 138, L. 1979; amd. Sec. 1, Ch. 638, L. 1985.

5-11-212. Fees for proceedings. (1) A complete set of the proceedings of a regular or special session of the legislature may be purchased from the legislative services division for the amount prescribed by the legislative council. Upon receipt of payment, the executive director of the legislative services division shall supply the purchaser with a complete set of the proceedings.

(2) A purchaser who requests that a set of the proceedings be mailed shall pay an additional fee as prescribed by the council for each complete set that is mailed.

(3) Single copies of bills, resolutions, or amendments to bills or resolutions may be purchased from the legislative services division for a price varying with the length of the document as prescribed by the legislative council.

(4) Single copies of status sheets or status of proceedings may be purchased from the legislative services division for a price per copy as prescribed by the legislative council. A person may subscribe to receive daily copies of the status sheets or status of proceedings by mail for a fee set by the legislative council to cover the costs of the service.

(5) The executive director of the legislative services division shall account for all funds collected under this section and shall transmit the funds to the treasurer of the state of Montana, who shall credit them to the general fund.

History: En. Sec. 2, Ch. 223, L. 1959; amd. Sec. 1, Ch. 14, L. 1967; amd. Sec. 1, Ch. 5, L. 1969; amd. Sec. 2, Ch. 292, L. 1974; amd. Sec. 22, Ch. 309, L. 1977; R.C.M. 1947, 43-902; amd. Sec. 10, Ch. 138, L. 1979; amd. Sec. 2, Ch. 638, L. 1985; amd. Sec. 24, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in five places, throughout section, substituted references to Legislative Services Division for references to Legislative Council; in (1) inserted reference to proceedings of a special session; and made minor changes in style. Amendment effective March 12, 1997.

Cross-References

General fund defined, 17-2-102.

5-11-213. Exclusions. Each general circulation newspaper published in Montana and each radio or television station broadcasting in Montana that has registered with the executive director of the legislative services division is exempt from 5-11-212 and shall receive one complete set of the proceedings of the legislature for the ensuing biennium without charge.

History: En. Sec. 3, Ch. 223, L. 1959; amd. Sec. 3, Ch. 292, L. 1974; R.C.M. 1947, 43-903; amd. Sec. 1, Ch. 64, L. 1985; amd. Sec. 3, Ch. 638, L. 1985; amd. Sec. 25, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 near middle substituted "legislative services division" for "legislative council" and near end substituted "proceedings of the legislature" for "legislative proceedings". Amendment effective March 12, 1997.

5-11-214. Exemptions from fees. All elected state officials, state department heads, the state law library, and county clerk and recorders shall be exempted from 5-11-212.

History: En. Sec. 4, Ch. 223, L. 1959; amd. Sec. 4, Ch. 292, L. 1974; R.C.M. 1947, 43-904.

5-11-215 through 5-11-220 reserved.

5-11-221. Distribution of proceedings of 1972 constitutional convention. The legislative council shall determine the methods of disposition and distribution of the copies of the proceedings of the 1972 constitutional convention. The council may set such sale price or prices for the copies of the proceedings as it determines appropriate. Proceeds from the sale of the proceedings must be deposited in the general fund.

History: En. Sec. 1, Ch. 4, L. 1985.

Part 3

Interstate Cooperation

5-11-301. Functions of legislative council — interstate and international cooperation. It is a function of the legislative council, within the limits of appropriations, to:

(1) carry forward the participation of the state of Montana as a member of the council of state governments and the national conference of state legislatures, and the legislative council is designated as the Montana commission on interstate and international cooperation;

(2) encourage and assist the government of this state to develop and maintain friendly contact by correspondence, by conference, and otherwise with the other states, with the federal government, and with local units of government, as well as tribal governments, bordering Canadian provinces, and regions designated as sister states by the legislature;

(3) establish delegations and committees as may be considered advisable to confer with similar delegations and committees from other states, provinces, and countries concerning problems of mutual interest. The membership of the delegations and committees may consist of legislators and employees of the state other than members of the legislative council. Legislative members of the delegations and committees must be reimbursed and compensated as provided in 5-2-302.

(4) endeavor to advance cooperation between this state and other units of government whenever it seems advisable to do so by formulating proposals for interstate compacts and reciprocal or uniform legislation and by facilitating the adoption of uniform or reciprocal administrative rules and regulations, informal cooperation of governmental offices, personal cooperation among governmental officials and employees, interchange and clearance of research and information, and any other suitable process;

(5) make appointments to any policy committee established by the Pacific Northwest economic region as provided in 5-11-703(2).

History: En. Sec. 2, Ch. 72, L. 1959; R.C.M. 1947, 82-2112; amd. Sec. 3, Ch. 8, L. 1985; amd. Sec. 5, Ch. 630, L. 1991; amd. Sec. 32, Ch. 545, L. 1995.

5-11-302. Council of state governments. In order to facilitate such cooperation, the council of state governments is hereby declared to be a joint governmental agency of this state and of the other states which cooperate through it.

History: En. Sec. 3, Ch. 72, L. 1959; R.C.M. 1947, 82-2113.

Part 4

Computer System Planning

Part Cross-References

Data processing equipment and services — review and approval of contracts and procurement methods required, 2-17-501.

5-11-401. Purpose. It is the purpose of this part to establish a mechanism for computer system planning encompassing broad policy needs, long-term direction for computer use, and the effective implementation of a detailed plan for the legislative branch. It is the purpose of the plan to assure coordination of information system decisions so that the overall effectiveness of the senate, the house of representatives, and legislative agencies may be improved. It is the further purpose of the plan to enhance the coordination of legislative branch systems with executive branch systems wherever possible.

History: En. Sec. 1, Ch. 687, L. 1989.

5-11-402. Legislative branch computer system planning council. There is a legislative branch computer system planning council composed of:

(1) the secretary of the senate or another representative of the senate designated by the president;

(2) the chief clerk of the house of representatives or another representative of the house designated by the speaker;

(3) the sergeants-at-arms in the two houses or another representative of each house designated by the presiding officer of the legislative administration committee of that house;

(4) the executive director of the legislative services division, who shall chair the planning council;

(5) the legislative auditor;

(6) the legislative fiscal analyst;

(7) the consumer counsel; and

(8) a person designated by the director of the department of administration to represent the data processing policy and planning functions of the department, who shall serve as a nonvoting member of the planning council.

History: En. Sec. 2, Ch. 687, L. 1989; amd. Sec. 33, Ch. 545, L. 1995.

Cross-References

State Data Processing Advisory Council, 2-17-502.

5-11-403. Duties of legislative branch computer system planning council. (1) The legislative branch computer system planning council shall develop and maintain a legislative branch computer system plan. In developing and maintaining this plan, the planning council shall:

(a) continuously review or have reviewed existing information systems that are candidates for automation or enhancement, as well as review existing automated systems that may be improved or integrated with new applications;

(b) develop and maintain a description of functions or services in the legislative branch and its agencies that would, through application or improvement of computer technology, provide better service to members of the legislature, legislative agencies, and the public;

(c) develop and maintain a ranking of needs, taking into consideration the relative effectiveness and probable cost of alternative systems; and

(d) develop and maintain recommended system standards for the legislative branch and standard or custom software and hardware solutions appropriate to the needs and environment of the legislative branch and its agencies.

(2) To the extent possible:

(a) future applications should be explicitly identified in the plan;

(b) current applications should allow a high degree of flexibility so that future applications are not limited; and

(c) both current and future applications should be coordinated and compatible with the standards and goals of the executive branch established under 2-17-501 through 2-17-503, as well as the legislative branch standards developed in accordance with the requirement in subsection (1)(d).

History: En. Sec. 3, Ch. 687, L. 1989.

5-11-404. Technical support. (1) The executive director of the legislative services division shall provide technical staff support to the legislative branch computer system planning council. In performing this duty, the legislative services division shall assist the planning council by:

(a) developing or having developed analyses of existing and alternate systems;

(b) providing technical solutions and advice related to the standards set by the planning council;

(c) assisting in assessing benefits and costs of optional solutions;

(d) apprising the planning council of developments and directions in the industry;

(e) maintaining a liaison with and informing the planning council of plans and directions within the executive branch; assisting in the selection and purchasing of supplies and equipment; and

(f) providing other assistance as may be requested.

(2) The executive director shall encourage participation of appropriate personnel of the senate, the house of representatives, and other legislative entities in the provision of technical support.

History: En. Sec. 4, Ch. 687, L. 1989; amd. Sec. 34, Ch. 545, L. 1995.

5-11-405. Legislative branch computer system plan — adoption. The legislative branch computer system plan must be approved and adopted by the legislative council.

History: En. Sec. 5, Ch. 687, L. 1989; amd. Sec. 35, Ch. 545, L. 1995.

5-11-406. Legislative branch systems — conformity to standards. Computer hardware and software systems installed by the senate, the house of representatives, and legislative branch agencies must conform to standards established in the legislative branch computer system plan in effect at the time the purchasing decision is made.

History: En. Sec. 6, Ch. 687, L. 1989.

Parts 5 and 6 reserved

Part 7

Pacific Northwest Economic Region

5-11-701. Legislative findings. (1) The legislature finds that there is a new emerging global economy in which countries and regions located in specific areas of the world are forging new cooperative arrangements.

(2) The legislature finds that these new cooperative arrangements are increasing the competitiveness of the participating countries and regions, thus increasing the economic benefits and the overall quality of life for the citizens of the individual countries and regions.

(3) The legislature also finds that the Pacific Northwest states of Alaska, Idaho, Montana, Oregon, and Washington and the Canadian provinces of Alberta and British Columbia are in a strategic position to act together as a region, thus increasing the overall competitiveness of the individual states and provinces that will provide substantial economic benefits for all of their citizens.

History: En. Sec. 1, Ch. 630, L. 1991.

5-11-702. Participation in Pacific Northwest economic region. The Pacific Northwest economic region is hereby enacted into law and entered into by the state of Montana as a party and is in full force and effect in accordance with the terms of this agreement.

THE PACIFIC NORTHWEST ECONOMIC REGION

ARTICLE I — Policy and Purpose

(1) States and provinces participating in the Pacific Northwest economic region shall seek to develop and establish policies that:

(a) promote greater regional collaboration among the seven entities;

(b) enhance the overall competitiveness of the region in international and domestic markets;

(c) increase the economic well-being of all citizens in the region; and

(d) improve the quality of life of the citizens of the Pacific Northwest.

(2) (a) States and provinces recognize that there are many public policy areas in which cooperation and joint efforts would be mutually beneficial. These areas include but are not limited to:

(i) international trade;

(ii) economic development;

(iii) human resources;

(iv) the environment and natural resources;

(v) energy; and

(vi) education.

(b) Parties to this agreement shall work diligently to establish collaborative activity in these and other appropriate policy areas where such cooperation is considered to be worthwhile and of benefit to the participating entities.

(c) Participating states and provinces also agree that there are areas in which cooperation may not be feasible.

(3) The substantive actions of the Pacific Northwest economic region may take the form of uniform legislation enacted by two or more states or provinces or policy initiatives endorsed as appropriate by participating entities. It is not necessary for all states and provinces to participate in each initiative.

ARTICLE II — Eligible Parties and Effective Date

(1) Each of the following states and provinces is eligible to become a party to this agreement: Alaska, Alberta, British Columbia, Idaho, Montana, Oregon, and Washington.

(2) This agreement establishing the Pacific Northwest economic region becomes effective when it is executed by one state, one province, and one additional state or province in a form considered appropriate by each entity.

(3) This agreement continues in force and remains binding upon each of the states and provinces entering into it until renounced by the state or province.

(4) Renunciation of this agreement must be preceded by sending 1 year's notice in writing of intention to withdraw from the agreement to all other parties to the agreement.

ARTICLE III — Organizational Structure

(1) Each state and province participating in this agreement shall appoint representatives to the Pacific Northwest economic region.

(2) The organizational structure of the Pacific Northwest economic region shall consist of the following:

(a) a delegate council consisting of the governor or a designee and four legislators from each participating state and four representatives from each participating province; and

(b) an executive committee consisting of one legislator from each participating state or province who is a member of the delegate council and four of the governors or premiers or their designees.

(3) Policy committees may be established to carry out further duties and responsibilities of the Pacific Northwest economic region.

ARTICLE IV — Duties and Responsibilities

(1) The delegate council has the following duties and responsibilities:

(a) facilitate the involvement of other government officials in the development and implementation of specific collaborative initiatives;

(b) work with policymaking committees in the development and implementation of specific initiatives;

(c) approve general organizational policies developed by the executive committee;

(d) provide final approval of the annual budget and staffing structure for the Pacific Northwest economic region developed by the executive committee; and

(e) other duties and responsibilities as may be established in the rules and regulations of the Pacific Northwest economic region.

(2) The executive committee shall perform the following duties and responsibilities:

(a) elect the president and vice president of the Pacific Northwest economic region;

(b) approve and implement general organizational policies;

(c) develop the annual budget;

(d) devise the annual action plan;

(e) act as liaison with other public and private sector entities; and

(f) other duties and responsibilities established in the rules and regulations of the Pacific Northwest economic region.

(3) The rules and regulations of the Pacific Northwest economic region shall establish the procedure for voting.

ARTICLE V — Membership of Policy Committees

(1) Policy committees dealing with specific subject matter may be established by the executive committee.

(2) Each participating state and province shall appoint legislators to sit on these policy committees in accordance with its own rules and regulations concerning such appointments.

ARTICLE VI — General Provisions

This agreement may not be construed to limit the powers of any state or province or to repeal or prevent the enactment of any legislation.

History: En. Sec. 2, Ch. 630, L. 1991; amd. Sec. 1, Ch. 141, L. 1995.

5-11-703. Appointment to Pacific Northwest economic region — vacancy. (1) Pursuant to 5-11-702, Article III, the governor or a designee and four legislators must be appointed to the delegate council of the Pacific Northwest economic region. The legislative members are appointed as follows:

(a) one member to be appointed by the president of the senate;

(b) one member to be appointed by the speaker of the house of representatives;

(c) one member to be appointed by the minority leader of the senate; and

(d) one member to be appointed by the minority leader of the house of representatives.

(2) If the Pacific Northwest economic region establishes policy committees under 5-11-702, Article V, appointments of legislators to the policy committees are to be made by the legislative council as provided in 5-11-301.

(3) In the event that a vacancy occurs, appointment to fill the vacancy must be made in the same manner as the original appointment.

History: En. Sec. 3, Ch. 630, L. 1991; amd. Sec. 2, Ch. 141, L. 1995.

5-11-704. Compensation of certain appointees to Pacific Northwest economic region. Legislative members appointed to the Pacific Northwest economic region under 5-11-703 are entitled to compensation as provided in 5-2-302.

History: En. Sec. 4, Ch. 630, L. 1991; amd. Sec. 3, Ch. 141, L. 1995.

CHAPTER 12

LEGISLATIVE FINANCE ACT

Part 1 — General

5-12-101. Title and purpose of chapter.
5-12-102. Definitions.

Part 2 — Legislative Finance Committee

5-12-201. Legislative finance committee.
5-12-202. Appointment of members.
5-12-203. Term — officers — compensation.
5-12-204. Vacancies.
5-12-205. Powers and duties of committee.

Part 3 — Legislative Fiscal Analyst

5-12-301. Legislative fiscal division.
5-12-302. Fiscal analyst's duties.
5-12-303. Fiscal analysis information from state agencies.
5-12-304. Employees and consultants.

Part 4 — Budget Amendments

5-12-401. Submission of budget amendments to committee.
5-12-402. Repealed.

Chapter Cross-References

Creation of state debt by Legislature, Art. VIII, sec. 8, Mont. Const.

Balanced budget, Art. VIII, sec. 9, Mont. Const.

Strict accountability, Art. VIII, sec. 12, Mont. Const.

Judicial budget requests, 3-1-702.

Biennial report by Department of Revenue to Legislature, 15-1-205.

State finance — general administration, Title 17, ch. 1.

State finance — budgeting, Title 17, ch. 7.

Judicial budget requests — submission to Legislature by Governor, 17-7-122.

Disbursement and expenditure, Title 17, ch. 8.

Part 1
General

5-12-101. Title and purpose of chapter. (1) This chapter may be cited as "The Legislative Finance Act".

(2) Because the legislature is responsible for appropriating public funds, it must provide for fiscal analysis of state government to accumulate, compile, analyze, and furnish such information bearing upon the financial matters of the state that is relevant to issues of policy and questions of statewide importance.

History: En. 43-1109 by Sec. 1, Ch. 448, L. 1975; R.C.M. 1947, 43-1109.

Cross-References

Committee review of appropriations requests, 5-2-202.

Attorney General to report to Appropriations Committee regarding law enforcement teletypewriter communications system, 44-2-304.

5-12-102. Definitions. In this chapter, the following definitions apply:

(1) "Budget amendment" means a request submitted through the budget director to the committee for executive branch agencies to expend funds in excess of those appropriated by the legislature.

(2) "Budget director" means the budget director appointed pursuant to 17-7-103.

(3) "Committee" means the legislative finance committee created by this chapter.

(4) "State agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public moneys by virtue of an appropriation from the legislature, that handles money on behalf of the state, or that holds any trust or agency moneys from any source.

History: (1)En. 43-1117 by Sec. 1, Ch. 510, L. 1975; Sec. 43-1117, R.C.M. 1947; (2) thru (4)En. 43-1110 by Sec. 2, Ch. 448, L. 1975; Sec. 43-1110, R.C.M. 1947; R.C.M. 1947, 43-1110, 43-1117.

Part 2
Legislative Finance Committee

Part Cross-References

Dedication of state revenue, Title 17, ch. 1, part 5.

5-12-201. Legislative finance committee. There is a legislative finance committee which is a permanent joint committee of the legislature.

History: **En. 43-1111 by Sec. 3, Ch. 448, L. 1975; amd. Sec. 23, Ch. 309, L. 1977; R.C.M. 1947, 43-1111(part).**

5-12-202. Appointment of members. (1) The legislative finance committee consists of:

(a) four members of the senate finance and claims committee appointed by the chairman;

(b) two members of the senate appointed at large by the committee on committees;

(c) four members of the house of representatives appropriations committee appointed by the chairman; and

(d) two members of the house appointed at large by the speaker.

(2) These members shall be appointed before the end of each legislative session. No more than three members of each house, two committee members and one at-large member, may be from the same political party.

History: **En. 43-1112 by Sec. 4, Ch. 448, L. 1975; amd. Sec. 5, Ch. 103, L. 1977; R.C.M. 1947, 43-1112(1), (2).**

5-12-203. Term — officers — compensation. (1) Appointments are for 2 years, and a member of the committee shall serve until his term of office as a legislator ends or until his successor is appointed, whichever occurs first.

(2) The committee shall elect one of its members as chairman and such other officers as it considers necessary.

(3) Members of the committee are entitled to receive compensation and expenses as provided in 5-2-302.

History: **En. 43-1112 by Sec. 4, Ch. 448, L. 1975; amd. Sec. 5, Ch. 103, L. 1977; R.C.M. 1947, 43-1112(4), (5), (6).**

5-12-204. Vacancies. If a vacancy occurs on the committee when the legislature is not in session, the remaining members shall select a member of the appropriate political party and appropriate committee, as provided in 5-12-202, to complete the unexpired term. If there is a vacancy on the committee at the beginning of a legislative session because a member's term of office as a legislator has ended, a member of the same political party must be appointed in the same manner as the original appointment, no later than the 10th legislative day, to serve until a successor is appointed under 5-12-202.

History: **En. 43-1112 by Sec. 4, Ch. 448, L. 1975; amd. Sec. 5, Ch. 103, L. 1977; R.C.M. 1947, 43-1112(3); amd. Sec. 36, Ch. 545, L. 1995.**

5-12-205. Powers and duties of committee. The committee:

(1) may organize, adopt rules to govern its proceedings, and meet as often as necessary, upon the call of the presiding officer, to advise and consult with the legislative fiscal analyst;

(2) may employ and, in accordance with the rules for classification and pay adopted by the legislative council, set the salary of the legislative fiscal analyst. The legislative fiscal analyst shall serve at the pleasure of and be responsible for providing services to the committee.

(3) may exercise the investigatory powers of a standing committee under chapter 5, part 1, of this title; and

(4) shall, before each regular and special legislative session involving budgetary matters, prepare recommendations to the house appropriations committee and the senate finance and claims committee on the application of certain budget issues. At a minimum, the recommendations must include

procedures for the consistent application during each session of inflation factors, the allocation of fixed costs, and the personal services budget. The committee may also make recommendations on other issues of major concern in the budgeting process, such as estimating the cost of implementing particular programs based upon present law.

History: **En. 43-1113 by Sec. 5, Ch. 448, L. 1975; R.C.M. 1947, 43-1113; amd. Sec. 37, Ch. 545, L. 1995; amd. Sec. 1, Ch. 347, L. 1997.**

Compiler's Comments

1997 Amendment: Chapter 347 inserted (4) requiring Committee prior to each special or regular legislative session involving budgetary matters to prepare recommendations to the House Appropriations and Senate Finance and Claims Committees, establishing minimum elements to be included in the recommendations, and allowing the Committee to make recommendations concerning other issues of major concern in the budgeting process; and made minor changes in style. Amendment effective July 1, 1997.

Cross-References

Powers and duties of Council, 5-11-105.

Part 3
Legislative Fiscal Analyst

Part Cross-References

Dedication of state revenue, Title 17, ch. 1, part 5.

State finance — budgeting, Title 17, ch. 7.

5-12-301. Legislative fiscal division. There is a legislative fiscal division. The legislative fiscal analyst shall manage the legislative fiscal division to support the legislative finance committee and carry out the provisions of this chapter.

History: **En. 43-1111 by Sec. 3, Ch. 448, L. 1975; amd. Sec. 23, Ch. 309, L. 1977; R.C.M. 1947, 43-1111(part); amd. Sec. 38, Ch. 545, L. 1995.**

5-12-302. Fiscal analyst's duties. The legislative fiscal analyst shall:

(1) provide for fiscal analysis of state government and accumulate, compile, analyze, and furnish information bearing upon the financial matters of the state that is relevant to issues of policy and questions of statewide importance, including but not limited to investigation and study of the possibilities of effecting economy and efficiency in state government;

(2) estimate revenue from existing and proposed taxes;

(3) analyze the executive budget and budget requests of selected state agencies and institutions, including proposals for the construction of capital improvements;

(4) for the legislative session convening in January 1997, following receipt of the information required in 17-7-122 from the governor and in 17-7-123 from the budget director in a mutually prescribed format, publish the governor's budget and incorporate the information required by 17-7-123 in a combined governor's budget and legislative fiscal analyst's budget analysis presentation. The combined budget and budget analysis presentation must be made available to the legislature prior to the convening date set for a regular session of the legislature. The cost of printing the combined budget and budget analysis presentation must be shared proportionally by the office of budget and program planning and the legislative finance division. This section does not prohibit the legislative fiscal analyst from including any analysis and comments on any

portion of the executive budget in the combined budget and budget analysis presentation.

(5) make the reports and recommendations that the legislative fiscal analyst considers desirable to the legislature and make reports and recommendations as requested by the legislative finance committee and the legislature;

(6) assist committees of the legislature and individual legislators in compiling and analyzing financial information; and

(7) assist the revenue oversight committee in performing its revenue estimating duties under 5-18-107(5).

History: En. 43-1114 by Sec. 6, Ch. 448, L. 1975; R.C.M. 1947, 43-1114; amd. Sec. 2, Ch. 608, L. 1989; amd. Sec. 39, Ch. 545, L. 1995.

5-12-303. Fiscal analysis information from state agencies. (1) The legislative fiscal analyst may investigate and examine the costs and revenue of state government activities and may examine and obtain copies of the records, books, and files of any state agency, including confidential records.

(2) When confidential records and information are obtained from a state agency, the legislative fiscal analyst and staff must be subject to the same penalties for unauthorized disclosure of the confidential records and information provided for under the laws administered by the state agency. The legislative fiscal analyst shall develop policies to prevent the unauthorized disclosure of confidential records and information obtained from state agencies.

(3) The legislative fiscal analyst may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by removing names, addresses, occupations, social security numbers, and taxpayer identification numbers. The department of revenue may not alter the data in any other way. The data is subject to the same restrictions on disclosure as are individual income tax returns.

(4) Within 1 day after the legislative finance committee presents its budget analysis to the legislature, the budget director and the legislative fiscal analyst shall exchange expenditure and disbursement recommendations by second-level expenditure detail and by funding sources detailed by accounting entity. This information must be filed in the respective offices and be made available to the legislature and the public. In preparing the budget analysis for the next biennium for submission to the legislature, the legislative fiscal analyst shall use the base budget, the present law base, and new proposals as defined in 17-7-102.

(5) This section does not authorize publication or public disclosure of information if the law prohibits publication or disclosure.

History: En. 43-1115 by Sec. 7, Ch. 448, L. 1975; R.C.M. 1947, 43-1115; amd. Sec. 1, Ch. 25, Sp. L. June 1986; amd. Sec. 1, Ch. 787, L. 1991; amd. Sec. 1, Ch. 20, L. 1993; amd. Sec. 1, Ch. 12, Sp. L. November 1993; amd. Sec. 40, Ch. 545, L. 1995; amd. Sec. 2, Ch. 347, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 347 deleted former (4) that read: "(4) The budget director shall furnish the legislative fiscal analyst with copies of all budget requests, in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst, at the time of submission to the budget director as provided by law and, if requested, all underlying and supporting documentation. In preparing the executive budget for the next biennium for submission to the legislature, the budget director shall use the base budget, the present law base, and new proposals as defined in 17-7-102"; deleted former (5) that read: "(5) In the year preceding each legislative session, the budget director shall furnish the legislative fiscal analyst, in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst:

(a) by October 10, a preliminary budget reflecting the base budget and, by November 1, a present law base for each agency and a copy of the documents that reflect the anticipated receipts and other means of financing the base budget and present law base for each fiscal year of the ensuing biennium;

(b) by November 15, a preliminary budget that must meet the statutory requirements for submission of the budget to the legislature and a summary of the preliminary budget designed for distribution to members and members-elect of the legislature;

(c) by November 12, a paper copy and an electronic copy of the documents that reflect expenditures to the second level, as provided in 17-1-102(3), by funding source and detailed by accounting entity; and

(d) by December 15, all amendments to the preliminary budget"; and made minor changes in style. Amendment effective July 1, 1997.

5-12-304. Employees and consultants. The legislative fiscal analyst may engage personnel and consultants to fulfill the duties of the division within the limits of appropriations for the division. The legislative fiscal analyst may define the duties of personnel engaged and shall fix the salaries of employees in accordance with the rules for classification and pay adopted by the legislative council.

History: En. 43-1116 by Sec. 8, Ch. 448, L. 1975; R.C.M. 1947, 43-1116; amd. Sec. 41, Ch. 545, L. 1995.

Cross-References

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

Part 4
Budget Amendments

Part Cross-References

Expenditure of new federal assistance program funds, 17-3-108.

State finance — budgeting, Title 17, ch. 7.

Budget amendment procedure, Title 17, ch. 7, part 4.

Expenditures in excess of appropriation unlawful, 17-8-103, 17-8-104.

5-12-401. Submission of budget amendments to committee. All budget amendments for state agencies must be submitted through the budget director to the legislative finance committee as soon as received by the budget director. No state agency shall expend in excess of its legislative appropriation, which includes a lawfully approved and valid budget amendment.

History: En. 43-1118 by Sec. 2, Ch. 510, L. 1975; amd. Sec. 24, Ch. 309, L. 1977; R.C.M. 1947, 43-1118; amd. Sec. 6, Ch. 536, L. 1983.

5-12-402. Repealed. Sec. 82, Ch. 545, L. 1995.

History: En. 43-1119 by Sec. 3, Ch. 510, L. 1975; R.C.M. 1947, 43-1119; amd. Sec. 7, Ch. 536, L. 1983.

CHAPTER 13

LEGISLATIVE AUDIT ACT

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Chapter Cross-References

Privatization plan review, Title 2, ch. 8, part 3.

Fiscal year and financial reports, 17-2-110.

Part 1

General

5-13-101. Title and purpose of chapter. (1) This chapter may be cited as "The Legislative Audit Act".

(2) Because the legislature is responsible for authorizing the expenditure of public moneys, designating the sources from which moneys may be collected, and shaping the administration to perform the work of state government and is held finally accountable for fiscal policy, the legislature should also be responsible for the audit of fiscal accounts and records so that it may be assured that its directives have been faithfully carried out. It is the intent of this chapter that each agency of state government be audited for the purpose of furnishing

the legislature with factual information vital to the discharge of its legislative duties.

History: En. Sec. 1, Ch. 249, L. 1967; R.C.M. 1947, 79-2301.

5-13-102. Definitions. In this chapter:

(1) "committee" means the legislative audit committee;

(2) "state agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public moneys by virtue of an appropriation from the legislature or that handles money on behalf of the state or that holds any trust or agency moneys from any source.

History: En. Sec. 2, Ch. 249, L. 1967; R.C.M. 1947, 79-2302.

Part 2

Legislative Audit Committee

Part Cross-References

Legislature to establish postaudit committee, Art. V, sec. 10, Mont. Const.

Legislative Audit Committee — agency termination, 2-8-112, 2-8-113.

Legislative Audit Committee — privatization plan review, Title 2, ch. 8, part 3.

5-13-201. Legislative audit committee. There is a legislative audit committee which is a permanent joint committee of the legislature.

History: En. 79-2303.1 by Sec. 1, Ch. 367, L. 1974; amd. Sec. 25, Ch. 309, L. 1977; R.C.M. 1947, 79-2303.1(1).

5-13-202. Appointment and term of members — officers — vacancies. (1) The legislative audit committee consists of six members of the senate and six members of the house of representatives appointed before the end of each regular session in the same manner as standing committees of the respective houses are appointed. No more than three of the appointees of each house may be members of the same political party.

(2) A member of the committee shall serve until the member's term of office as a legislator ends or until a successor is appointed, whichever occurs first.

(3) The committee shall elect one of its members as presiding officer and other officers as it considers necessary.

(4) A vacancy on the committee occurring when the legislature is not in session shall be filled by the selection of a member of the legislature by the remaining members of the committee. If there is a vacancy on the committee at the beginning of a legislative session because a member's term of office as a legislator has ended, a member of the same political party must be appointed in the same manner as the original appointment, no later than the 10th legislative day, to serve until a successor is appointed under subsection (1).

History: En. Sec. 3, Ch. 249, L. 1967; Sec. 79-2303, R.C.M. 1947; amd. and redes. 79-2304 by Sec. 2, Ch. 367, L. 1974; amd. Sec. 26, Ch. 309, L. 1977; R.C.M. 1947, 79-2304; amd. Sec. 42, Ch. 545, L. 1995.

5-13-203. Meetings — compensation. (1) The committee shall meet as often as may be necessary during and between legislative sessions to advise and consult with the legislative auditor.

(2) Committee members are entitled to receive compensation and expenses as provided in 5-2-302.

History: En. Sec. 4, Ch. 249, L. 1967; Sec. 79-2304, R.C.M. 1947; amd. and redes. 79-2305 by Sec. 3, Ch. 367, L. 1974; amd. Sec. 8, Ch. 103, L. 1977; R.C.M. 1947, 79-2305.

Part 3
Legislative Auditor

Part Cross-References

Audits of political subdivision, Title 2, ch. 7, part 5.

Review of proposed bond for state officers, 2-9-602.

Auditor as member of State Records Committee, 2-15-1013.

Gasohol use in state vehicles — review of records, 2-17-414.

Distribution of financial reports of state agencies, 17-2-110.

Microbusiness Development Act, Title 17, ch. 6, part 4.

Department of Commerce to provide information regarding banking reports to Legislative Auditor, 32-1-234.

Offenses against public administration, Title 45, ch. 7.

5-13-301. Legislative audit division. There is a legislative audit division. The legislative auditor is responsible to manage the division in order to perform the duties imposed by this chapter.

History: En. 79-2303.1 by Sec. 1, Ch. 367, L. 1974; amd. Sec. 25, Ch. 309, L. 1977; R.C.M. 1947, 79-2303.1(2); amd. Sec. 43, Ch. 545, L. 1995.

5-13-302. Appointment and qualifications. (1) The committee shall appoint the legislative auditor and set the legislative auditor's salary in accordance with the rules for classification and pay adopted by the legislative council.

(2) The legislative auditor shall hold a degree from an accredited college or university with a major in accounting or an allied field and shall have at least 2 years' experience in the field of governmental accounting and auditing.

History: En. Sec. 5, Ch. 249, L. 1967; Sec. 79-2305, R.C.M. 1947; redes. 79-2307 by Sec. 8, Ch. 367, L. 1974; R.C.M. 1947, 79-2307; amd. Sec. 44, Ch. 545, L. 1995.

5-13-303. Term and removal. The legislative auditor is responsible solely to the legislature. He shall hold office for a term of 2 years beginning with July 1 of each even-numbered year. The committee may remove him for misfeasance, malfeasance, or nonfeasance in office at any time after notice and hearing.

History: En. Sec. 7, Ch. 249, L. 1967; Sec. 79-2307, R.C.M. 1947; redes. 79-2309 by Sec. 8, Ch. 367, L. 1974; R.C.M. 1947, 79-2309; amd. Sec. 1, Ch. 48, L. 1991.

5-13-304. *(Temporary)* **Powers and duties.** The legislative auditor shall:

(1) conduct a financial and compliance audit of every state agency every 2 years covering the 2-year period since the last audit, unless otherwise required by state law;

(2) conduct a special audit whenever the legislative auditor determines it necessary and shall so advise the members of the legislative audit committee;

(3) make a complete written report of each audit. A copy of each report must be furnished to the department of administration, the state agency that was audited, each member of the committee, and the legislative services division.

(4) report immediately in writing to the attorney general and the governor any apparent violation of penal statutes disclosed by the audit of a state agency and furnish the attorney general with all information available relative to the violation;

(5) report immediately in writing to the governor any instances of misfeasance, malfeasance, or nonfeasance by a state officer or employee disclosed by the audit of a state agency;

(6) report immediately to the surety upon the bond of an official or employee when an audit discloses a shortage in the accounts of the official or employee. Failure to notify the surety does not release the surety from any obligation under the bond.

(7) have the authority to audit records of organizations and individuals receiving funds or property from or on behalf of the state to determine that the funds or property are administered in accordance with the applicable terms and conditions. Whenever a state agency enters into an agreement to provide resources under its control to others, the agency shall obtain the written consent of the recipient to the audit provided for in this subsection. *(Terminates July 1, 2001—sec. 4, Ch. 377, L. 1997.)*

5-13-304. *(Effective July 1, 2001)* **Powers and duties.** The legislative auditor shall:

(1) conduct a financial and compliance audit of every state agency every 2 years covering the 2-year period since the last audit, unless otherwise required by state law;

(2) conduct a special audit whenever the legislative auditor determines it necessary and shall so advise the members of the legislative audit committee;

(3) make a complete written report of each audit. A copy of each report must be furnished to the department of administration, the state agency that was audited, each member of the committee, and the legislative services division.

(4) report immediately in writing to the attorney general and the governor any apparent violation of penal statutes disclosed by the audit of a state agency and furnish the attorney general with all information available relative to the violation;

(5) report immediately in writing to the governor any instances of misfeasance, malfeasance, or nonfeasance by a state officer or employee disclosed by the audit of a state agency;

(6) report immediately to the surety upon the bond of an official or employee when an audit discloses a shortage in the accounts of the official or employee. Failure to notify the surety does not release the surety from any obligation under the bond.

(7) have the authority to audit records of organizations and individuals receiving grants from or on behalf of the state to determine that the grants are administered in accordance with the grant terms and conditions. Whenever a state agency enters into an agreement to grant resources under its control to others, the agency shall obtain the written consent of the grantee to the audit provided for in this subsection.

History: En. Sec. 8, Ch. 249, L. 1967; amd. Sec. 98, Ch. 326, L. 1974; Sec. 79-2308, R.C.M. 1947; amd. and redes. 79-2310 by Sec. 5, Ch. 367, L. 1974; amd. Sec. 27, Ch. 309, L. 1977; R.C.M. 1947, 79-2310; amd. Sec. 1, Ch. 472, L. 1985; amd. Sec. 16, Ch. 112, L. 1991;

amd. Sec. 14, Ch. 349, L. 1993; amd. Sec. 45, Ch. 545, L. 1995; amd. Sec. 1, Ch. 377, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 377 in (7), in two places in first sentence, substituted "funds or property" for "grants" and near end, before "terms", substituted "applicable" for "grant" and in second sentence, after "agreement to", substituted "provide" for "grant" and near end, after "consent of the", substituted "recipient" for "grantee". Amendment effective July 1, 1997, and terminates July 1, 2001.

Termination Date: Section 4, Ch. 377, L. 1997, provided: "[This act] terminates July 1, 2001."

Cross-References

Postaudit of University System, Art. X, sec. 9, Mont. Const.

Audits of group benefit plans, 2-18-816.

Audit of Board of Investments loans and investments, 17-5-1529, 17-5-1649, 17-6-321.

Liquidated claims against state subject to postaudit, 17-8-202.

Audit of community college district, 20-15-229.

Audit of Medical Legal Review Panel fund, 27-6-206.

Access to bank reports, 32-1-234.

Banks and trust companies — disposition of unclaimed funds, 32-1-537.

Auditor to inspect licensing accounts of Department of Fish, Wildlife, and Parks, 87-2-903.

Legislative audit of Board of Housing, 90-6-124.

5-13-305. Employees, consultants, and legal counsel — cure for impairment. (1) The legislative auditor may appoint and define the duties of employees and consultants who are necessary to carry out the provisions of this chapter, within the limitations of legislative appropriations. The legislative auditor shall set the pay for employees in accordance with the rules for classification and pay adopted by the legislative council. The legislative auditor may employ legal counsel to conduct proceedings under this chapter.

(2) The legislative auditor shall inform the legislative council and the legislative audit committee in writing of an administrative policy or rule adopted under 5-11-105 that may impair the independence of the division, along with a statement of the reasons for the opinion and suggested changes to cure the impairment. The legislative council shall review the rule in question and adopt a revision that is generally applicable to the legislative branch and that is designed to cure the impairment. While the impairment exists, the legislative audit committee may adopt a specific exemption to the questioned rule that states the alternative rule to be employed under the exemption.

History: En. Sec. 6, Ch. 249, L. 1967; Sec. 79-2306, R.C.M. 1947; amd. and redes. 79-2308 by Sec. 4, Ch. 367, L. 1974; R.C.M. 1947, 79-2308; amd. Sec. 46, Ch. 545, L. 1995.

Cross-References

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

5-13-306. Legislative auditor to assist legislature during sessions. During sessions of the legislature, the legislative auditor and his staff, when requested, shall assist the legislature, its committees, and its members by gathering and analyzing information relating to the fiscal affairs of state government.

History: En. Sec. 11, Ch. 249, L. 1967; Sec. 79-2311, R.C.M. 1947; redes. 79-2311.1 by Legislative Council, 1974; R.C.M. 1947, 79-2311.1.

5-13-307. Recommendations of legislative auditor — implementation costs. (1) The reports of the legislative auditor may include comments, recommendations, and suggestions, but he shall have no power to enforce them nor shall he otherwise influence or direct executive or legislative action.

(2) Whenever significant costs are associated with the implementation of audit recommendations, the legislative auditor shall, if practicable, note this fact and the estimated amount of such costs in the appropriate audit report.

History: (1)En. Sec. 10, Ch. 249, L. 1967; Sec. 79-2310, R.C.M. 1947; amd. and redes. 79-2312 by Sec. 6, Ch. 367, L. 1974; R.C.M. 1947, 79-2312; (2)En. Sec. 5, Ch. 24, L. 1981.

5-13-308. Audit standards and objectives. The objectives of audits of state agencies conducted by the legislative auditor are to determine whether:

(1) the agency is carrying out only those activities or programs authorized by the legislature and is conducting them efficiently and effectively;

(2) expenditures are made only in furtherance of authorized activities and in accordance with the requirements of applicable laws and regulations;

(3) the agency collects and accounts properly for all revenues and receipts arising from its activities;

(4) the assets of the agency or in its custody are adequately safeguarded and controlled and utilized in an efficient manner;

(5) reports and financial statements by the agency to the governor, the legislature, and central control agencies disclose fully the nature and scope of the activities conducted and provide a proper basis for evaluating the agency's operations.

History: En. Sec. 9, Ch. 249, L. 1967; Sec. 79-2309, R.C.M. 1947; redes. 79-2311 by Sec. 8, Ch. 367, L. 1974; R.C.M. 1947, 79-2311.

5-13-309. Information from state agencies. (1) All state agencies shall aid and assist the legislative auditor in the auditing of books, accounts, and records.

(2) The legislative auditor may examine at any time the books, accounts, and records, confidential or otherwise, of a state agency. This shall not be construed as authorizing the publication of information which the law prohibits publishing.

(3) The head of each state agency shall immediately notify both the attorney general and the legislative auditor in writing upon the discovery of any theft, actual or suspected, involving state moneys or property under his control or for which he is responsible.

History: En. Sec. 12, Ch. 249, L. 1967; amd. Sec. 1, Ch. 270, L. 1971; Sec. 79-2312, R.C.M. 1947; amd. and redes. 79-2314 by Sec. 7, Ch. 367, L. 1974; amd. Sec. 62, Ch. 359, L. 1977; R.C.M. 1947, 79-2314; amd. Sec. 1, Ch. 232, L. 1981.

5-13-310. Prosecution — discipline of professionals. (1) The attorney general shall conduct on behalf of the state all prosecutions for public offenses involving a state agency that are reported to the attorney general by the legislative auditor.

(2) If the attorney general declines the prosecution or fails to commence action on a public offense within a reasonable time, the county attorney of the appropriate county shall conduct on behalf of the state the prosecution.

(3) In an action taken by the attorney general or a county attorney under this section, in which a professional person in the state of Montana is charged or may have engaged in unethical conduct, all records or certified copies of the records, including investigative materials, must be turned over to the appropriate disciplinary authority for the profession immediately upon completion of the action.

History: **En. Sec. 1, Ch. 4, L. 1974; amd. Sec. 1, Ch. 458, L. 1975; R.C.M. 1947, 79-2315; amd. Sec. 1, Ch. 14, L. 1993.**

Cross-References

Theft and related offenses, Title 45, ch. 6, part 3.

Offenses against public administration, Title 45, ch. 7.

5-13-311. Legislative auditor to establish and maintain toll-free number for reporting fraud, waste, and abuse — procedures. (1) The legislative auditor shall establish and maintain a toll-free telephone number for use by Montana residents for the reporting of fraud, waste, and abuse in state government. The legislative auditor shall review all telephone calls received at the toll-free number and shall maintain a record of each call. The legislative auditor shall:

(a) analyze and verify the information received from each telephone call; or

(b) refer the information for appropriate action to the agency that is or appears to be the subject of the call.

(2) A state agency that receives information referred to it by the legislative auditor pursuant to this section shall take adequate and appropriate action to investigate and remedy any fraud, waste, or abuse discovered as a result of the referral. The agency shall report in writing to the legislative auditor concerning the results of its investigation and those measures taken to correct any fraud, waste, or abuse discovered as a result of the referral.

(3) Information received at the toll-free number is confidential until the time that the legislative auditor or other appropriate agency determines the validity of the information and takes corrective action. After the legislative auditor or other appropriate agency takes action to verify the fraud, waste, or abuse complained of and takes any corrective action, information concerning the subject of the complaint and the remedy, if any, is public information unless precluded by law.

(4) The legislative auditor shall, as directed by the legislative audit committee, periodically report to the committee on:

(a) the use of the toll-free number;

(b) the results of the reviews, verifications, and referrals; and

(c) any corrective actions taken by the appropriate agencies.

(5) Information received at the toll-free number concerning a governmental entity other than state government may be referred by the legislative auditor to an appropriate federal, state, or local government agency.

(6) If the legislative auditor determines that as a result of a review and verification or referral pursuant to this section, a waste of state resources has occurred, the legislative auditor shall report the matter in writing to the legislative fiscal analyst.

(7) The legislative auditor shall advertise the existence and purpose of the toll-free number in an appropriate manner.

History: **En. Sec. 1, Ch. 20, Sp. L. November 1993.**

Cross-References

Fraud, 28-2-404 through 28-2-406.

5-13-312. Deposit of money recovered. Unless otherwise provided by law, money recovered as a result of an action taken pursuant to 5-13-311 must be deposited in the state general fund.

History: **En. Sec. 2, Ch. 20, Sp. L. November 1993.**

5-13-313 through 5-13-320 reserved.

5-13-321. Joint audits of medicaid program. (1) The legislative auditor shall participate with the United States department of health and human services office of the inspector general in a program of joint audits of the Montana medicaid program authorized by Title 53, chapter 6. For the purpose of the joint audits, the legislative auditor may cooperate with the inspector general, accept and provide information necessary to the success of the joint audits, and enter into contracts for the performance of the joint audits. Audits authorized by this section may examine all or any part of the financing or performance of the medicaid program, whether operated directly by the department of public health and human services, by another state agency, or by a contractor with a state agency. Joint audits are subject to the audit standards, objectives, and reporting procedures required by state law and as required in applicable federal laws, regulations, and policies.

(2) Audit costs of the legislative auditor for conducting joint audits authorized by subsection (1) are considered direct costs of the state agency or program subject to the audit. Funds for the payment of the expenses of the legislative auditor must be deposited in the state special revenue fund as provided in 5-13-403. To the maximum extent allowable under federal regulations, the legislative auditor shall charge audit costs of joint audits to federal funds.

(3) Audits conducted pursuant to this section must be approved by the committee as part of the operational plan of the legislative auditor.

History: **En. Sec. 1, Ch. 183, L. 1995.**

Part 4

Audit Costs and Contracts

5-13-401. Definitions. As used in this part, the following definitions apply:

(1) "Agency" means each state office, department, division, board, commission, council, committee, institution, university system unit, or other entity or instrumentality of the executive branch, office of the judicial branch, or office of the legislative branch of state government.

(2) "Audit services" means financial compliance post audits as required by this chapter.

(3) "University system unit" means the board of regents or its units.

History: **En. Sec. 1, Ch. 24, L. 1981.**

5-13-402. Audit costs. (1) Prior to July 1 of each even-numbered year, the legislative auditor shall advise each agency and the budget director of the estimated audit costs for the following biennium. Each agency shall include the estimated audit costs in its proposed budget submitted to the budget director pursuant to 17-7-112. The budget director shall notify the legislative auditor if the executive budget recommendation to the legislature for audit costs differs from that proposed by the legislative auditor.

(2) Not later than 60 days after adjournment of each legislature, the budget director shall provide to the legislative auditor a schedule reflecting, by fund, amounts appropriated to each agency for audit costs.

(3) The legislative auditor shall bill agencies for audit services as he considers necessary. In no event may the legislative auditor bill an agency for audit services in excess of amounts appropriated for audit services. Additional audit related services may be provided by the legislative auditor at a cost agreed to by an agency and billed to the agency.

History: En. Sec. 2, Ch. 24, L. 1981.

5-13-403. Audit account — appropriation and expenditures. All money for audits transferred to the legislative auditor as provided in 5-13-402 must be deposited in the state special revenue fund in the state treasury to the credit of the office of the legislative auditor. The money deposited that is in excess of general and pay plan appropriations is statutorily appropriated, as provided in 17-7-502, and may be expended by the legislative auditor to pay expenses incurred in auditing state agencies pursuant to an operational plan approved by the legislative audit committee.

History: En. Sec. 4, Ch. 24, L. 1981; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 1, Ch. 234, L. 1993.

5-13-404 through 5-13-410 reserved.

5-13-411. Legislative auditor to approve contracts for audit services. No contract for an audit of a state agency may be entered into without the approval of the legislative auditor.

History: En. Sec. 3, Ch. 24, L. 1981.

CHAPTER 14

ADMINISTRATIVE CODE COMMITTEE

Part 1 — Composition, Terms, and Officers

5-14-101. Appointment and composition.
5-14-102. Term of office.
5-14-103. Vacancies.
5-14-104. Officers.

Chapter Cross-References

Administrative Code Committee as referred to in Montana Administrative Procedure Act, 2-4-102.

Publication of legislative poll, 2-4-306.

Publication and arrangement of ARM, 2-4-311.

Agencies to submit recommendations for legislation, 2-4-314.

Legislative review of administrative rules, Title 2, ch. 4, part 4.

Declaratory judgments on validity or application of rules, 2-4-506.

Part 1

Composition, Terms, and Officers

5-14-101. Appointment and composition. The administrative code committee consists of four members of the senate and four members of the house of representatives appointed before the 60th legislative day of the regular session in the same manner as standing committees of the respective houses are appointed. No more than two of the appointees of each house may be members of the same political party.

History: En. 82-4203.2 by Sec. 1, Ch. 410, L. 1975; amd. Sec. 5, Ch. 285, L. 1977; R.C.M. 1947, 82-4203.2(part).

5-14-102. Term of office. A member of the committee shall serve until his term of office as a legislator ends or until the end of the 60th legislative day of the session of the biennium following his appointment or until his successor is appointed, whichever occurs first.

History: En. 82-4203.2 by Sec. 1, Ch. 410, L. 1975; amd. Sec. 5, Ch. 285, L. 1977; R.C.M. 1947, 82-4203.2(part).

5-14-103. Vacancies. A vacancy on the committee occurring when the legislature is not in session shall be filled by the selection of a member of the legislature by the remaining members of the committee. If there is a vacancy on the committee at the beginning of a legislative session because a member's term of office as a legislator has ended, a member of the same political party must be appointed in the same manner as the original appointment, no later than the 10th legislative day, to serve until a successor is appointed under 5-14-101.

History: En. 82-4203.2 by Sec. 1, Ch. 410, L. 1975; amd. Sec. 5, Ch. 285, L. 1977; R.C.M. 1947, 82-4203.2(part); amd. Sec. 47, Ch. 545, L. 1995.

5-14-104. Officers. The committee shall elect one of its members as chairman and such other officers as it considers necessary.

History: En. 82-4203.2 by Sec. 1, Ch. 410, L. 1975; amd. Sec. 5, Ch. 285, L. 1977; R.C.M. 1947, 82-4203.2(part).

CHAPTER 15

LEGISLATIVE CONSUMER COMMITTEE CONSUMER COUNSEL

Part 1 — Legislative Consumer Committee

5-15-101. Legislative consumer committee — appointment and composition.
5-15-102. Ineligibility for appointment.
5-15-103. Term of office.
5-15-104. Vacancies.
5-15-105. Officers.

Part 2 — Consumer Counsel

5-15-201. Consumer counsel — appointment and qualifications.

Part 1

Legislative Consumer Committee

Part Cross-References

Structure and organization of Consumer Committee, Title 69, ch. 1, part 2.

Role of Consumer Counsel, Title 69, ch. 2, part 2.

Advice of distributors and consumers regarding energy development, 90-4-306.

5-15-101. Legislative consumer committee — appointment and composition. (1) There is a legislative consumer committee consisting of two members of the senate and two members of the house of representatives.

(2) Members shall be appointed in the same manner as standing committees of the respective houses before the 60th legislative day of the legislative session following the expiration of the terms of the members of the committee. No more than one of the appointees of each house may be members of the same political party.

History: En. Sec. 3, Ch. 65, L. 1973; R.C.M. 1947, 70-703(part).

5-15-102. Ineligibility for appointment. Any person who is an employee, agent, officer, partner, or director of any regulated company or who has served a regulated company in any capacity within the 3 years previous to his appointment may not be a member of the committee.

History: En. Sec. 3, Ch. 65, L. 1973; R.C.M. 1947, 70-703(3).

5-15-103. Term of office. A member shall serve until his term of office as a legislator ends and until his successor is appointed.

History: En. Sec. 3, Ch. 65, L. 1973; R.C.M. 1947, 70-703(6).

5-15-104. Vacancies. A vacancy on the committee occurring when the legislature is not in session shall be filled by the selection of a legislator by the remaining members of the committee. If there is a vacancy on the committee at the beginning of a legislative session because a member's term of office as a legislator has ended, a member of the same political party must be appointed in the same manner as the original appointment, no later than the 10th legislative day, to serve until a successor is appointed under 5-15-101.

History: En. Sec. 3, Ch. 65, L. 1973; R.C.M. 1947, 70-703(4); amd. Sec. 48, Ch. 545, L. 1995.

5-15-105. Officers. The committee shall elect one of its members as chairman and such other officers as it determines necessary.

History: En. Sec. 3, Ch. 65, L. 1973; R.C.M. 1947, 70-703(7).

Part 2

Consumer Counsel

Part Cross-References

Consumer Counsel, Art. XIII, sec. 2, Mont. Const.

Structure and organization of Consumer Counsel, Title 69, ch. 1, part 2.

5-15-201. Consumer counsel — appointment and qualifications. The committee shall appoint a consumer counsel and set his salary. The consumer counsel shall have the following minimum qualifications and such additional qualifications as the committee determines appropriate:

(1) a bachelor's degree or equivalent from an accredited college or university with a major or minor in accounting or allied fields;

(2) be admitted to practice law in Montana courts and in the United States district court for the state of Montana.

History: En. Sec. 5, Ch. 65, L. 1973; R.C.M. 1947, 70-705.

CHAPTER 16

ENVIRONMENTAL QUALITY COUNCIL

Part 1 — Composition, Terms, and Officers

5-16-101. Appointment and composition.
5-16-102. Qualifications.
5-16-103. Term of office.
5-16-104. Vacancies.
5-16-105. Officers.

Chapter Cross-References

Environmental policy, Title 75, ch. 1.

Environmental Quality Council — water policy duties, 85-2-105.

Part 1

Composition, Terms, and Officers

5-16-101. Appointment and composition. The environmental quality council consists of 17 members as follows:

(1) the governor or the governor's designated representative is an ex officio member of the council and shall participate in council meetings as a nonvoting member;

(2) six members of the senate and six members of the house of representatives appointed before the 50th legislative day in the same manner as standing committees of the respective houses are appointed. No more than three of the appointees of each house may be members of the same political party.

(3) four members of the general public. Two public members must be appointed by the speaker of the house with the consent of the house minority leader, and two must be appointed by the president of the senate with the consent of the senate minority leader.

History: En. Sec. 8, Ch. 238, L. 1971; amd. Sec. 1, Ch. 492, L. 1975; amd. Sec. 1, Ch. 204, L. 1977; R.C.M. 1947, 69-6508(part); amd. Sec. 49, Ch. 545, L. 1995.

Cross-References

Environmental impact statements, 75-1-201.

Environmental Quality Council — organization, Title 75, ch. 1, part 3.

5-16-102. Qualifications. In considering the appointments under subsections (2) and (3) of 5-16-101, consideration shall be given to their qualifications to:

(1) analyze and interpret environmental trends and information of all kinds;

(2) appraise programs and activities of the state government in the light of the policy set forth in 75-1-103;

(3) be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the state; and

(4) formulate and recommend state policies to promote the improvement of the quality of the environment.

History: **En. Sec. 8, Ch. 238, L. 1971; amd. Sec. 1, Ch. 492, L. 1975; amd. Sec. 1, Ch. 204, L. 1977; R.C.M. 1947, 69-6508(part).**

5-16-103. Term of office. The terms of office of all council members shall be 2 years and shall terminate upon appointment of a new council before the 50th legislative day. Council members may be reappointed. However, in no case shall a member serve more than 6 years.

History: **En. Sec. 9, Ch. 238, L. 1971; amd. Sec. 2, Ch. 492, L. 1975; R.C.M. 1947, 69-6509(1).**

5-16-104. Vacancies. (1) A vacancy on the council of a member appointed under 5-16-101(2) occurring when the legislature is not in session shall be filled by the selection of a member of the legislature by the same method as the original appointment. If there is a vacancy on the committee at the beginning of a legislative session because a member's term of office as a legislator has ended, a member of the same political party must be appointed in the same manner as the original appointment, no later than the 10th legislative day, to serve until a successor is appointed under 5-16-101.

(2) (a) When a vacancy on the council of a member appointed under 5-16-101(3) has occurred or is expected to occur, the appointing authority shall have posted in a conspicuous place in the state capitol a notice announcing the actual or anticipated vacancy and describing the procedure for applying for appointment.

(b) A copy of the notice required under subsection (2)(a) must be sent to the lieutenant governor, who may publish the notice in an appropriate publication.

History: **En. Sec. 8, Ch. 238, L. 1971; amd. Sec. 1, Ch. 492, L. 1975; amd. Sec. 1, Ch. 204, L. 1977; R.C.M. 1947, 69-6508(part); amd. Sec. 2, Ch. 142, L. 1987; amd. Sec. 50, Ch. 545, L. 1995.**

5-16-105. Officers. The council shall elect one of its members as chairman and such other officers as it deems necessary. Such officer shall be elected for a term of 2 years.

History: **En. Sec. 9, Ch. 238, L. 1971; amd. Sec. 2, Ch. 492, L. 1975; R.C.M. 1947, 69-6509(2).**

CHAPTER 17

CAPITOL BUILDING AND PLANNING — RESTORATION

Part 1 — Capitol Building and Planning Committee

5-17-101. Repealed.
5-17-102. Renumbered 5-11-115 by Code Commissioner, 1993.
5-17-103. Renumbered 5-11-116 by Code Commissioner, 1993.
5-17-104. Repealed.

Part 2 — Capitol Restoration Commission

5-17-201. Definition.
5-17-202. Capitol restoration commission — composition — allocation.
5-17-203. Legislative membership on commission.
5-17-204. Compensation and expenses for members.
5-17-205. Commission activities — authority.
5-17-206. Authority to incorporate as nonprofit organization.
5-17-207. Account established — use of funds.

Part 3 — Pearl Harbor Memorial Committee

5-17-301. Definitions.
5-17-302. Pearl Harbor memorial committee — purpose — membership — duties — approval by capitol building and planning committee.
5-17-303. Authority to incorporate as nonprofit organization — account established.

Part 1

Capitol Building and Planning Committee

5-17-101. Repealed. Sec. 6, Ch. 7, L. 1993.

History: En. Sec. 1, Ch. 141, L. 1979; amd. Sec. 1, Ch. 608, L. 1981; amd. Sec. 4, Ch. 700, L. 1983; amd. Sec. 1, Ch. 56, L. 1987.

5-17-102. Renumbered 5-11-115 by Code Commissioner, 1993.

5-17-103. Renumbered 5-11-116 by Code Commissioner, 1993.

5-17-104. Repealed. Sec. 6, Ch. 7, L. 1993.

History: En. Sec. 4, Ch. 141, L. 1979.

Part 2

Capitol Restoration Commission

5-17-201. Definition. As used in this part, "commission" means the capitol restoration commission established in 5-17-202.

History: En. Sec. 1, Ch. 689, L. 1991.

5-17-202. Capitol restoration commission — composition — allocation. (1) There is a capitol restoration commission consisting of:

(a) the governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and state auditor, who are ex officio members of the commission. Each ex officio member may appoint up to two members from the public sector or private sector who shall serve for 4 years.

(b) the director of the Montana historical society and the state architect, who shall serve on the commission and assist the commission with technical support.

(2) The governor is the presiding officer, and in the governor's absence, the secretary of state shall preside. The director of the department of administration is the secretary of the commission. In the absence of either the presiding officer or the secretary, an officer pro tempore may be elected from the ex officio members.

(3) (a) The meetings of the commission are held at the call of the presiding officer.

(b) If an ex officio member is unable to attend a meeting of the commission, the member may designate another individual to attend.

(4) The commission is allocated to the department of administration for administrative purposes only as prescribed in 2-15-121.

History: En. Sec. 2, Ch. 689, L. 1991; amd. Sec. 9, Ch. 10, L. 1993.

5-17-203. Legislative membership on commission. The president of the senate and the speaker of the house of representatives are ex officio members of the commission. Each may appoint up to two members from the public or private sector who shall serve for 2 years.

History: En. Sec. 3, Ch. 689, L. 1991.

5-17-204. Compensation and expenses for members. (1) Except as provided in subsection (2), each commission member is entitled to compensation in the amount determined by the commission president, not to exceed $25 for each day in which the commission member is actually and necessarily engaged in the performance of commission duties. A commission member is also entitled to travel expense reimbursement as provided in 2-18-501 through 2-18-503.

(2) Members of the commission who are full-time salaried officers or employees of the state or any political subdivision of the state are not entitled to compensation for their services as members of the commission but are entitled to reimbursement for travel expenses, as provided in 2-18-501 through 2-18-503, when engaged in commission activities.

History: En. Sec. 7, Ch. 689, L. 1991.

5-17-205. Commission activities — authority. The commission may:

(1) raise money from the private sector for the ongoing historical restoration and preservation of the capitol; and

(2) suggest capitol improvements, except changes in the location of the Montana senate chambers.

History: En. Sec. 5, Ch. 689, L. 1991; amd. Sec. 26, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 deleted (3), which referred to planning for the Capitol centennial event; and made minor changes in style. Amendment effective March 12, 1997.

5-17-206. Authority to incorporate as nonprofit organization. The commission may incorporate as a nonprofit organization subject to the provisions of Title 35.

History: En. Sec. 4, Ch. 689, L. 1991.

5-17-207. Account established — use of funds. (1) An account is established in the state special revenue fund, as provided in 17-2-102, into which all money raised by the commission must be deposited.

(2) The money deposited in the account and the interest earned on the deposits must be used only for the historical restoration and preservation of the capitol upon the commission's approval and for the administrative expenses of the commission.

History: En. Sec. 6, Ch. 689, L. 1991; amd. Sec. 1, Ch. 191, L. 1995.

Part 3

Pearl Harbor Memorial Committee

5-17-301. Definitions. As used in this part, the following definitions apply:

(1) "Committee" means the Pearl Harbor memorial committee established in 5-17-302.

(2) "Memorial" means the state Pearl Harbor memorial to commemorate survivors of the December 7, 1941, attack on Pearl Harbor, Hawaii.

History: En. Sec. 1, Ch. 75, L. 1993.

5-17-302. Pearl Harbor memorial committee — purpose — membership — duties — approval by capitol building and planning committee. (1) There is a Pearl Harbor memorial committee. The committee shall develop a memorial to be placed at the state capitol to commemorate survivors of the December 7, 1941, attack on Pearl Harbor.

(2) The committee consists of at least four members appointed by the governor. Committee members shall serve until the memorial is completed and shall select a presiding officer and other officers as necessary. Committee members shall serve on a voluntary, uncompensated basis.

(3) The committee shall:

(a) design a memorial to commemorate survivors of the December 7, 1941, attack on Pearl Harbor;

(b) recommend the placement of the memorial within the capitol complex; and

(c) raise the funds to pay for the memorial.

(4) The design and placement of the memorial must be approved by the department of administration, in consultation with the Montana historical society.

History: En. Sec. 2, Ch. 75, L. 1993; amd. Sec. 5, Ch. 75, L. 1993.

5-17-303. Authority to incorporate as nonprofit organization — account established. (1) For the purposes of raising money for the memorial, the committee may incorporate as a nonprofit organization subject to the provisions of Title 35.

(2) An account is established in the state special revenue fund, as provided in 17-2-102, into which all money raised by the committee must be deposited. The money deposited in the account may be used only for the purposes of designing and erecting the memorial.

History: En. Sec. 3, Ch. 75, L. 1993.

CHAPTER 18

REVENUE OVERSIGHT COMMITTEE

Part 1 — Composition—Powers and Duties

5-18-101. Definition.
5-18-102. Revenue oversight committee — appointment and composition.
5-18-103. Term of office.
5-18-104. Vacancies.
5-18-105. Officers.
5-18-106. Meetings and compensation.
5-18-107. Powers and duties of committee — duty to review revenue rules — legislative oversight of department of revenue — committee reports — revenue estimating and use of estimates — coal tax oversight.
5-18-108. Biennial critique.
5-18-109. Legislative intent — poll.
5-18-110. Evidentiary value of legislative poll.
5-18-111 through 5-18-114 reserved.
5-18-115. Report to revenue oversight committee.

Part 2 — Coal Tax Oversight Subcommittee
(Repealed. Sec. 3, Ch. 40, L. 1993)

Part 1
Composition — Powers and Duties

5-18-101. Definition. In this part "committee" means the revenue oversight committee created in 5-18-102.

History: En. Sec. 1, Ch. 268, L. 1979.

5-18-102. Revenue oversight committee — appointment and composition. (1) There is a revenue oversight committee.

(2) The committee consists of:

(a) six members of the senate appointed by the committee on committees in consultation with the chairman of the senate taxation committee and the minority leader of the senate;

(b) six members of the house of representatives appointed by the speaker in consultation with the chairman of the house taxation committee and the minority leader of the house.

(3) No more than three members from each house may be of the same political party.

(4) Members must be appointed before the 90th legislative day of a regular session.

History: En. Sec. 2, Ch. 268, L. 1979.

5-18-103. Term of office. Appointments to the committee are for 2 years. A member of the committee serves until his term of office as a legislator is ended or his successor is appointed, whichever occurs first.

History: En. Sec. 3, Ch. 268, L. 1979.

5-18-104. Vacancies. (1) A vacancy occurring during a legislative session must be filled in the same manner as the original appointment.

(2) A vacancy occurring when the legislature is not in session must be filled by the selection of a member of the appropriate house and political party by the remaining members of the committee.

(3) An appointment to the committee under this section is for the unexpired term of the original member.

History: En. Sec. 4, Ch. 268, L. 1979.

5-18-105. Officers. The committee shall elect one of its members as chairman and may elect other officers it considers necessary.

History: En. Sec. 5, Ch. 268, L. 1979.

5-18-106. Meetings and compensation. (1) The committee shall meet as often as may be necessary during and between legislative sessions.

(2) Committee members are entitled to receive compensation and expenses as provided in 5-2-302.

History: En. Sec. 6, Ch. 268, L. 1979.

5-18-107. Powers and duties of committee — duty to review revenue rules — legislative oversight of department of revenue — committee reports — revenue estimating and use of estimates — coal tax oversight. (1) The committee shall review all proposed rules of the department of revenue filed with the secretary of state.

(2) The committee may:

(a) request and obtain the department's rulemaking records for the purpose of reviewing compliance with 2-4-305;

(b) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit the recommendations to the department;

(c) submit oral or written testimony at a rulemaking hearing;

(d) require the department to appear before the committee and respond to the committee's recommendations for the adoption, amendment, or rejection of a rule;

(e) require that a rulemaking hearing be held in accordance with the provisions of 2-4-302 through 2-4-305;

(f) recommend to the legislature the repeal, amendment, or adoption of a rule as provided in 2-4-412;

(g) institute, intervene in, or otherwise participate in proceedings involving the legality of a rule under the Montana Administrative Procedure Act in the state and federal courts and administrative agencies;

(h) review the incidence and conduct of the department's administrative proceedings;

(i) require the department to publish the full or partial text of any pertinent material adopted by reference under 2-4-307;

(j) by an affirmative vote of at least six members of the committee, contract for the preparation of an economic impact statement or require the department to prepare an economic impact statement, following the provisions of 2-4-405;

(k) petition the department to promulgate, amend, or repeal a rule. Within 60 days after submission of a petition, the department shall either deny the petition in writing, stating its reasons for the denial, or initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305.

(l) make written objection to a proposed rule of the department for lack of substantial compliance with 2-4-302 through 2-4-305. The provisions of 2-4-406 govern the objection procedure, the department's response, and the procedure for and effect of publication of the objection in the Montana Administrative Register and the Administrative Rules of Montana.

(m) petition the department for a declaratory ruling as to the applicability of any statutory provision or of any rule or order of the department. A copy of a declaratory ruling must be filed with the secretary of state for publication in the register. A declaratory ruling or the refusal to issue a ruling is subject to judicial review in the same manner as decisions or orders in contested cases under the Montana Administrative Procedure Act.

(n) petition for judicial review of the sufficiency of the reasons for the department's finding of imminent peril to the public health, safety, or welfare, cited in support of an emergency or temporary rule proposed by the department under 2-4-303; and

(o) require the department to conduct the biennial review of its rules as required in 2-4-314 and report its findings to the committee.

(3) The committee shall exercise legislative oversight of the department of revenue, including without limitation the review of:

(a) proposed budgets;

(b) proposed legislation;

(c) pending litigation; and

(d) major contracts and personnel actions of the department.

(4) The committee may investigate and issue reports on any matter concerning taxation or the department of revenue.

(5) (a) The committee shall have prepared by December 1 for introduction during each regular session of the legislature in which a revenue bill is under consideration an estimate of the amount of revenue projected to be available for legislative appropriation.

(b) The committee's estimate, as introduced in the legislature, constitutes the legislature's current revenue estimate until amended or until final adoption of the estimate by both houses. It is intended that the legislature's estimates and the assumptions underlying the estimates will be used by all agencies with responsibilities for estimating revenues or costs, including the preparation of fiscal notes.

(c) The legislative services division shall provide staff assistance to the committee. The committee may request the assistance of the staffs of the office of the legislative fiscal analyst, the legislative auditor, the department of revenue, and any other agency that has information regarding any of the tax or revenue bases of the state.

(6) The committee may:

(a) review the programs financed by coal severance tax funds;

(b) consider any matters relating to coal taxation; and

(c) prepare for the legislature a report, as provided in 5-11-210, on potential uses of the coal tax trust fund to develop a stable, strong, and diversified Montana economy that meets the needs of present and future generations of Montanans while maintaining and improving a clean and healthful environment as required by Article IX, section 1, of the Montana constitution.

History: En. Sec. 7, Ch. 268, L. 1979; amd. Sec. 2, Ch. 572, L. 1989; amd. Sec. 3, Ch. 608, L. 1989; amd. Sec. 1, Ch. 603, L. 1991; amd. Sec. 2, Ch. 40, L. 1993; amd. Sec. 3, Ch. 302, L. 1993; amd. Sec. 27, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (5)(c) substituted "legislative services division" for "legislative council". Amendment effective March 12, 1997.

5-18-108. Biennial critique. The committee shall prepare a biennial critique of the department of revenue's activities that the department shall publish as an appendix to the biennial report of the department.

History: En. Sec. 8, Ch. 268, L. 1979.

5-18-109. Legislative intent — poll. (1) If the legislature is not in session, the committee may poll the members of the legislature by mail to determine whether a proposed rule of the department of revenue is consistent with the intent of the legislature.

(2) If 20 or more legislators object in writing to any rule of the department of revenue, the committee shall poll the members of the legislature.

(3) The poll shall include an opportunity for the department of revenue to present a written justification for the rule to the members of the legislature.

History: En. Sec. 9, Ch. 268, L. 1979.

Cross-References

Results of poll to be published with rule, 2-4-306.

5-18-110. Evidentiary value of legislative poll. (1) The results of a poll conducted by the committee are admissible in a court proceeding involving the validity of a rule.

(2) If the results of the poll show that the majority of the members of both houses find a rule contrary to the intent of the legislature, the rule shall be conclusively presumed to be contrary to the legislative intent in a court proceeding involving its validity.

History: En. Sec. 10, Ch. 268, L. 1979.

Cross-References

Results of poll to be published with rule, 2-4-306.

5-18-111 through 5-18-114 reserved.

5-18-115. Report to revenue oversight committee. The department of revenue shall at the request of the revenue oversight committee report to the revenue oversight committee on the department's progress in completing the revaluation cycle.

History: En. Sec. 4, Ch. 13, L. 1989; amd. Sec. 3, Ch. 27, Sp. L. November 1993.

Part 2

Coal Tax Oversight Subcommittee (Repealed. Sec. 3, Ch. 40, L. 1993)

Part Compiler's Comments

Histories of Repealed Sections:

5-18-201. En. Sec. 1, Ch. 695, L. 1983.

5-18-202. En. Sec. 1, Ch. 695, L. 1983.

5-18-203. En. Sec. 1, Ch. 695, L. 1983; amd. Sec. 2, Ch. 94, L. 1989; amd. Sec. 18, Ch. 112, L. 1991.

CHAPTER 19

COMMITTEE ON INDIAN AFFAIRS

Part 1 — General Provisions

5-19-101. Definition.
5-19-102. Committee on Indian affairs — appointment and composition.
5-19-103. Term of office.
5-19-104. Vacancies.
5-19-105. Officers.
5-19-106. Meetings and compensation.
5-19-107. Staff assistance.
5-19-108. Duties of the committee.

Chapter Cross-References

American Indians — unique cultural heritage, Art. X, sec. 1, Mont. Const.

State Coordinator of Indian Affairs, 2-15-217; Title 90, ch. 11, part 1.

State-tribal cooperative agreements, Title 18, ch. 11, part 1.

Part 1
General Provisions

5-19-101. Definition. As used in this chapter, "committee" means the committee on Indian affairs created in 5-19-102.

History: En. Sec. 1, Ch. 630, L. 1989.

5-19-102. Committee on Indian affairs — appointment and composition. (1) There is a committee on Indian affairs.

(2) The committee consists of four members of the senate, appointed by the committee on committees on a bipartisan basis, and four members of the house of representatives, appointed by the speaker of the house on a bipartisan basis.

(3) Appointments must be made before final adjournment of a regular session.

History: En. Sec. 2, Ch. 630, L. 1989; amd. Sec. 1, Ch. 636, L. 1993.

5-19-103. Term of office. Appointments to the committee are for 2 years. A member of the committee serves until his term of office as a legislator is ended or his successor is appointed, whichever occurs first.

History: En. Sec. 3, Ch. 630, L. 1989.

5-19-104. Vacancies. (1) A vacancy occurring during a legislative session must be filled in the same manner as the original appointment. If there is a vacancy on the committee at the beginning of a legislative session because a member's term of office as a legislator has ended, a member of the same political party must be appointed in the same manner as the original appointment no later than the 10th legislative day.

(2) A vacancy occurring when the legislature is not in session must be filled by the selection of a member from the appropriate house and political party by the remaining members of the committee.

(3) An appointment to the committee under this section is for the unexpired term of the original member.

History: En. Sec. 4, Ch. 630, L. 1989; amd. Sec. 51, Ch. 545, L. 1995.

5-19-105. Officers. The committee shall select one of its members as chairman and may elect other officers it considers necessary.

History: En. Sec. 5, Ch. 630, L. 1989.

5-19-106. Meetings and compensation. (1) The committee shall meet as often as the chairman considers necessary during and between legislative sessions.

(2) Committee members are entitled to receive compensation and expenses as provided in 5-2-302.

History: En. Sec. 6, Ch. 630, L. 1989.

5-19-107. Staff assistance. The legislative services division shall provide staff assistance to the committee. The legislative services division has the same authority of investigation and examination as it has for other committees under 5-11-106, and the legislative council has the same authority to hold hearings on behalf of the committee as it has for other committees under 5-11-107.

History: En. Sec. 7, Ch. 630, L. 1989; amd. Sec. 52, Ch. 545, L. 1995.

5-19-108. Duties of the committee. The committee shall:

(1) seek opinions of and information from Indian tribes, Indian tribal organizations, state agencies, local governments, non-Indians living on or near Indian reservations, and other interested persons and agencies in order to gain insight into Indian/non-Indian relations;

(2) hold hearings both on and off reservations to promote better understanding between tribes and public agencies and to improve both the Indian people's knowledge of the structure of state agencies and the legislative process and the non-Indian people's knowledge of tribal government and institutions;

(3) encourage and foster participation of Indian people at its meetings;

(4) act as a liaison between the Indian people and the legislature;

(5) encourage tribal-state and tribal-local government cooperation and otherwise promote amicable Indian/non-Indian relations;

(6) cooperate with the commissioner of higher education in a study of Indian students in Montana schools; and

(7) as provided in 5-11-210, report its activities, findings, recommendations, and any proposed legislation to the legislature.

History: En. Sec. 8, Ch. 630, L. 1989; amd. Sec. 19, Ch. 112, L. 1991.

CHAPTER 20

EDUCATIONAL COMMITTEES

Part 1 — Committee on Educational Accountability and Quality (Terminated. Sec. 7, Ch. 3, Sp. L. June 1989)

Part 2 — Joint Committee on Postsecondary Education Policy and Budget

5-20-201. Definitions.
5-20-202. Joint committee on postsecondary education policy and budget — appointment and composition.
5-20-203. Term of office.
5-20-204. Vacancies.
5-20-205. Officers — quorum — meetings.
5-20-206. Compensation.
5-20-207. Staff assistance.
5-20-208. Powers and duties of committee.

Part 1

Committee on Educational Accountability and Quality (Terminated. Sec. 7, Ch. 3, Sp. L. June 1989)

Part Compiler's Comments

Histories of Terminated Sections:

5-20-101. En. Sec. 1, Ch. 3, Sp. L. June 1989.

5-20-102. En. Sec. 2, Ch. 3, Sp. L. June 1989.

5-20-103. En. Sec. 3, Ch. 3, Sp. L. June 1989.

5-20-104. En. Sec. 4, Ch. 3, Sp. L. June 1989.

5-20-105. En. Sec. 5, Ch. 3, Sp. L. June 1989.

5-20-106. En. Sec. 6, Ch. 3, Sp. L. June 1989.

Part 2

Joint Committee on Postsecondary Education Policy and Budget

Part Compiler's Comments

Extension of Termination Date: Section 1, Ch. 225, L. 1997, amended sec. 11, Ch. 387, L. 1993, and sec. 2, Ch. 225, L. 1997, amended sec. 1, Ch. 381, L. 1995, by extending the termination date imposed by those chapters to July 1, 2005. Effective April 10, 1997.

5-20-201. *(Temporary)* **Definitions.** As used in this part, the following definitions apply:

(1) "Committee" means the joint committee on postsecondary education policy and budget created in 5-20-202.

(2) "University system" means those units listed in 20-25-201 and the vocational-technical centers designated in 20-16-106 [now repealed]. *(Terminates July 1, 2005—sec. 1, Ch. 225, L. 1997.)*

History: En. Sec. 1, Ch. 387, L. 1993.

5-20-202. *(Temporary)* **Joint committee on postsecondary education policy and budget — appointment and composition.** (1) There is a joint committee on postsecondary education policy and budget.

(2) The committee is composed of:

(a) four members of the senate, appointed by the committee on committees on a bipartisan basis, and four members of the house of representatives, appointed by the speaker of the house on a bipartisan basis. One of the legislative members shall serve as presiding officer upon election by a vote of committee members.

(b) two regents appointed by the chairman of the board of regents and one student of the university system appointed by the governor; and

(c) a representative from the executive branch appointed by the governor.

(3) Legislative appointments must be made before final adjournment of a regular session.

(4) All other appointments must be made prior to the first committee meeting following adjournment of a regular session. *(Terminates July 1, 2005—sec. 1, Ch. 225, L. 1997.)*

History: En. Sec. 2, Ch. 387, L. 1993.

5-20-203. *(Temporary)* **Term of office.** (1) Legislative appointments to the committee are for 2 years. A legislative member of the committee shall serve until the legislator's term of office is ended.

(2) Appointments of members of the board of regents and the student to the committee are for 2 years or until the expiration of the members' terms on the board of regents, whichever occurs first.

(3) The appointment of an executive branch representative to the committee is for 2 years. *(Terminates July 1, 2005—sec. 1, Ch. 225, L. 1997.)*

History: En. Sec. 3, Ch. 387, L. 1993.

5-20-204. *(Temporary)* **Vacancies.** (1) A legislative vacancy occurring during a legislative session must be filled in the same manner as the original appointment.

(2) A legislative vacancy occurring when the legislature is not in session must be filled by the selection of a member from the appropriate house and political party by the remaining members of the committee.

(3) All other vacancies must be filled in the same manner as the original appointment.

(4) An appointment to the committee under this section is for the unexpired term of the original member. *(Terminates July 1, 2005—sec. 1, Ch. 225, L. 1997.)*

History: En. Sec. 4, Ch. 387, L. 1993.

5-20-205. *(Temporary)* **Officers — quorum — meetings.** (1) The committee shall select one of its legislative members as presiding officer and may elect other officers it considers necessary.

(2) A simple majority of the committee constitutes a quorum to do business.

(3) The committee shall meet at least quarterly. *(Terminates July 1, 2005—sec. 1, Ch. 225, L. 1997.)*

History: En. Sec. 5, Ch. 387, L. 1993.

5-20-206. *(Temporary)* **Compensation.** (1) Legislative members are entitled to receive compensation and expenses as provided in 5-2-302.

(2) Members appointed by the board of regents are entitled to:

(a) $50 for each day in which a member is actually and necessarily engaged in the performance of committee duties; and

(b) travel expenses, as provided for in 2-18-501 through 2-18-503. *(Terminates July 1, 2005—sec. 1, Ch. 225, L. 1997.)*

History: En. Sec. 6, Ch. 387, L. 1993.

5-20-207. *(Temporary)* **Staff assistance.** The legislative fiscal analyst shall provide staff assistance to the committee. The legislative fiscal analyst has the same authority of investigation and examination on behalf of the committee as provided under 5-12-303. *(Terminates July 1, 2005—sec. 1, Ch. 225, L. 1997.)*

History: En. Sec. 7, Ch. 387, L. 1993.

5-20-208. *(Temporary)* **Powers and duties of committee.** (1) The committee may:

(a) organize and adopt rules to govern its proceedings; and

(b) exercise the investigatory powers of a standing committee under Title 5, chapter 5, part 1.

(2) The committee shall:

(a) provide information to the board of regents in the following areas:

(i) annual budget allocations;

(ii) annual goal statement development;

(iii) long-range planning;

(iv) outcome assessment programs; and

(v) any other area that the committee considers to have significant educational or fiscal policy impact;

(b) periodically review the success or failure of the university system in meeting its annual goals and long-range plans;

(c) periodically review the results of outcome assessment programs;

(d) develop mechanisms to ensure strict accountability of the revenues and expenditures of the university system;

(e) study and report to the legislature on the advisability of adjustments to the mechanisms used to determine funding for the university system, including criteria for determining appropriate levels of funding;

(f) act as a liaison between both the legislative and executive branches and the board of regents;

(g) encourage cooperation between the legislative and executive branches and the board of regents; and

(h) report its activities, findings, recommendations, and any proposed legislation to the legislature. *(Terminates July 1, 2005—sec. 1, Ch. 225, L. 1997.)*

History: **En. Sec. 8, Ch. 387, L. 1993.**

CHAPTER 21

COMMITTEE ON PUBLIC EMPLOYEE RETIREMENT SYSTEMS

Part 1 — General Provisions

5-21-101. Committee on public employee retirement systems — appointment.
5-21-102. Terms of members — officers — vacancies.
5-21-103. Meetings — compensation.
5-21-104. Staff assistance — contributions.
5-21-105. Duties of committee — committee review and report.

Chapter Compiler's Comments

Design of Retirement Plan to Replace or Modify Current Public Employees' Retirement System: Section 1, Ch. 191, L. 1997, provided: "(1) The committee on public employee retirement systems shall design a public employees' retirement plan to replace or modify the current public employees' retirement system provided for in Title 19, chapter 3.

(2) The new or modified retirement plan must be designed to provide for the following:

(a) increased portability of contributions;

(b) increased flexibility to allow plan members a choice in:

(i) selecting, from a group of set amounts, the amount of the member's contribution to the retirement plan;

(ii) directing investments; and

(iii) selecting the form of the benefit payout; and

(c) a retirement plan component that will provide for a specified benefit in retirement.

(3) (a) In designing the new or modified retirement plan, the committee shall involve employers, employees, members of the current public employees' retirement system, retirement plan administrators, policymakers, and other interested parties.

(b) The committee shall also gather and analyze information on the amount of state income tax revenue collected from the state's taxation of retirement benefits, consider this information in developing new or modified retirement benefits, and report the committee's findings to the 56th legislature.

(4) The committee shall establish an implementation schedule for conversion to the new

or modified retirement plan. The retirement plan design and the implementation schedule, including any implementing legislation, must be presented to the 56th legislature. The retirement plan design and implementation schedule must include but is not limited to:

(a) how the new or modified retirement plan is to be administered;

(b) the costs associated with the conversion;

(c) a timetable for implementation; and

(d) a preconversion and postconversion education plan for informing policymakers, administrative staffs, executive staffs, interagency staffs, employers, employees, retirement plan members, taxpayers, and other interested parties about the new or modified retirement plan.

(5) The committee may contract for consultant services."

Coordination: Section 3, Ch. 191, L. 1991, provided: "If ___ Bill No. ___ [LC 0381] is passed and approved and if it repeals or extends the sunset on the committee on public employee retirement systems, then "A committee designated by the legislative council pursuant to 5-5-211" as it appears in [section 1 of this act] and "the committee designated by the legislative council under [section 1]" as it appears in [section 2 of this act] shall read "the committee on public employee retirement systems"." LC 381 (House Bill No. 341), extending the sunset on the Committee on Public Employee Retirement Systems, was passed and approved April 2, 1997, as Ch. 193, L. 1997; therefore, the appropriate language changes were made.

Effective Date: Section 4, Ch. 191, L. 1997, provided: "[This act] is effective July 1, 1997."

Chapter Cross-References

Public Retirement Systems, Title 19.

Part 1
General Provisions

5-21-101. *(Temporary)* **Committee on public employee retirement systems — appointment.** (1) There is a committee on public employee retirement systems.

(2) The committee consists of four members of the senate appointed by the committee on committees and four members of the house of representatives appointed by the speaker of the house.

(a) No more than two of the committee members from each house may be members of the same political party.

(b) At least two committee members from each house shall serve on the standing committee to which retirement bills are regularly assigned during a regular session. One senate member shall serve on the senate finance and claims committee. One house member shall serve on the house appropriations committee.

(c) No more than two members appointed from each house may be public employees aside from their legislative service. *(Terminates June 30, 1999—sec. 1, Ch. 192, L. 1997.)*

History: En. Sec. 1, Ch. 549, L. 1993.

Compiler's Comments

Extension of Termination Date: Section 1, Ch. 192, L. 1997, amended sec. 9, Ch. 549, L. 1993, by extending the termination date imposed by that chapter. Section 2, Ch. 552, L. 1995, a prior extension of the termination date, was not amended. The Code Commissioner has reflected the intent of Ch. 192, L. 1997, by extending the termination until June 30, 1999. Effective April 2, 1997.

5-21-102. *(Temporary)* **Terms of members — officers — vacancies.** (1) Appointments to the committee on public employee retirement systems are for 2 years and must be made before the final adjournment of a regular legislative session. Each member of the committee shall serve until the member's term of office as a legislator ends or until the member's successor is appointed, whichever occurs first.

(2) The committee shall elect one of its members as presiding officer and another, who must be from the opposite political party, as vice presiding officer. The committee shall elect other officers it considers necessary.

(3) A vacancy that occurs when the legislature is not in session must be filled by the selection of a member from the same house and political party by the remaining members of the committee. An appointment to the committee under this subsection is for the unexpired term of the original member. *(Terminates June 30, 1999—sec. 1, Ch. 192, L. 1997.)*

History: En. Sec. 2, Ch. 549, L. 1993.

Compiler's Comments

Extension of Termination Date: Section 1, Ch. 192, L. 1997, amended sec. 9, Ch. 549, L. 1993, by extending the termination date imposed by that chapter. Section 2, Ch. 552, L. 1995, a prior extension of the termination date, was not amended. The Code Commissioner has reflected the intent of Ch. 192, L. 1997, by extending the termination until June 30, 1999. Effective April 2, 1997.

5-21-103. *(Temporary)* **Meetings — compensation.** (1) The committee on public employee retirement systems shall meet as often as the presiding officer considers necessary during and between legislative sessions.

(2) Committee members are entitled to receive compensation and expenses as provided in 5-2-302. *(Terminates June 30, 1999—sec. 1, Ch. 192, L. 1997.)*

History: En. Sec. 3, Ch. 549, L. 1993.

Compiler's Comments

Extension of Termination Date: Section 1, Ch. 192, L. 1997, amended sec. 9, Ch. 549, L. 1993, by extending the termination date imposed by that chapter. Section 2, Ch. 552, L. 1995, a prior extension of the termination date, was not amended. The Code Commissioner has reflected the intent of Ch. 192, L. 1997, by extending the termination until June 30, 1999. Effective April 2, 1997.

5-21-104. *(Temporary)* **Staff assistance — contributions.** (1) The legislative services division shall provide staff assistance to the committee on public employee retirement systems. On behalf of the committee, the legislative services division has the same authority of investigation and examination under 5-11-106 and the same authority to hold hearings under 5-11-107 as it has for other committees.

(2) The committee may request personnel from state agencies, political subdivisions, or the state public employee retirement systems to furnish any information and render any assistance that the committee may request.

(3) The committee may accept from the retirement systems and public employee and retiree organizations monetary contributions for legislative retirement studies. The contributions must be deposited in the state special revenue fund for appropriation by the legislature. *(Terminates June 30, 1999—sec. 1, Ch. 192, L. 1997.)*

History: En. Sec. 4, Ch. 549, L. 1993.

Compiler's Comments

Extension of Termination Date: Section 1, Ch. 192, L. 1997, amended sec. 9, Ch. 549, L. 1993, by extending the termination date imposed by that chapter. Section 2, Ch. 552, L. 1995, a prior extension of the termination date, was not amended. The Code Commissioner has reflected the intent of Ch. 192, L. 1997, by extending the termination until June 30, 1999. Effective April 2, 1997.

5-21-105. *(Temporary)* **Duties of committee — committee review and report.** (1) The committee on public employee retirement systems shall:

(a) consider the fiscal soundness of the state's public employee retirement systems, based on reports from the teachers' retirement board and the public employees' retirement board, and study and evaluate the equity and benefit structure of the state's public employee retirement systems;

(b) establish principles of sound fiscal and public policy as guidelines;

(c) as necessary, develop legislation to keep the retirement systems consistent with sound policy principles;

(d) solicit and review proposed statutory changes to any of the state's public employee retirement systems;

(e) report to the legislature on each legislative proposal reviewed by the committee. The report must include but is not limited to:

(i) a summary of the fiscal implications of the proposal;

(ii) an analysis of the effect that the proposal may have on other public employee retirement systems;

(iii) an analysis of the soundness of the proposal as a matter of public policy;

(iv) any amendments proposed by the committee; and

(v) the committee's recommendation on whether the proposal should be enacted by the legislature.

(f) attach the committee's report to any proposal that the committee considered and that is or has been introduced as a bill during a legislative session; and

(g) publish, for legislators' use, an information book on the state's public employee retirement systems.

(2) The committee may specify in its study plan, which may be adopted and amended by a majority vote of committee members, the date by which proposals affecting a retirement system must be submitted to the committee. *(Terminates June 30, 1999—sec. 1, Ch. 192, L. 1997.)*

History: En. Sec. 5, Ch. 549, L. 1993; amd. Sec. 1, Ch. 552, L. 1995.

Compiler's Comments

Extension of Termination Date: Section 1, Ch. 192, L. 1997, amended sec. 9, Ch. 549, L. 1993, by extending the termination date imposed by that chapter. Section 2, Ch. 552, L. 1995, a prior extension of the termination date, was not amended. The Code Commissioner has reflected the intent of Ch. 192, L. 1997, by extending the termination until June 30, 1999. Effective April 2, 1997.

CHAPTER 22

COMMITTEE ON CHILDREN AND FAMILIES

Part 1 — General Provisions

5-22-101. Legislative oversight committee — appointment — staff assistance.
5-22-102. Duties of oversight committee.

Chapter Cross-References

Family Law, Title 40.
Minors, Title 41.

Part 1
General Provisions

5-22-101. Legislative oversight committee — appointment — staff assistance. (1) (a) There is a joint oversight committee on children and families. The oversight committee is composed of eight members who are appointed as follows:

(i) four members of the house of representatives, not more than two of whom may be from one political party, appointed by the speaker of the house; and

(ii) four members of the senate, not more than two of whom may be from one political party, appointed by the committee on committees.

(b) The members appointed under subsection (1)(a) must include representatives from the house appropriations subcommittee on human services and aging and the senate finance and claims subcommittee on human services and aging.

(2) In case of a vacancy, a replacement must be selected in the manner of the original appointment.

(3) Members are entitled to salary and expenses as provided in 5-2-302.

(4) The oversight committee may request staff assistance from the legislative services division, which assistance may be provided within limits established by the legislative council, given other priorities and responsibilities.

(5) Each state agency that provides services or funding for a program or service for children and families shall provide assistance and information upon request of the oversight committee.

History: En. Sec. 1, Ch. 414, L. 1995; amd. Sec. 28, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (4) substituted "legislative services division" for "legislative council". Amendment effective March 12, 1997.

5-22-102. Duties of oversight committee. The joint oversight committee on children and families shall:

(1) examine public and private programs, services, and planning for children and families for the purpose of identifying duplications, inefficiencies, and any unmet needs within those programs, services, and plans;

(2) review federal, state, local, and private funds available to state and local jurisdictions for programs and services for children and families and consider feasible methods of refinancing those resources to maximize overall funding for existing and new programs;

(3) monitor interagency coordination of programs and services for children and families and study ways to improve coordination and collaboration among public and private human service providers at all levels of government in Montana;

(4) study the issues surrounding teenage parents and their families, including problems related to employment, education, parenting skills, and public assistance;

(5) monitor implementation of state and national welfare reforms related to at-risk families, child care, teenage parents, and other human service concerns;

(6) continue to study issues related to adult protective services;

(7) conduct an oversight committee performance evaluation at the conclusion of each interim; and

(8) report the results of its study in writing to each regular session of the legislature. The oversight committee shall also provide copies of its report to the governor and appropriate state agencies.

History: En. Sec. 2, Ch. 414, L. 1995; amd. Sec. 1, Ch. 257, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 257 inserted (7) requiring an oversight committee performance evaluation after each interim; and made minor changes in style.

CHAPTER 23

COMMITTEE ON STATE MANAGEMENT SYSTEMS

Part 1 — Composition—Powers and Duties—Reports

5-23-101. Purpose.
5-23-102. Definition.
5-23-103. Legislative oversight committee on state management systems — appointment and composition.
5-23-104. Term of office — vacancies.
5-23-105. Officers.
5-23-106. Meetings and compensation.
5-23-107. Powers and duties of committee — legislative oversight of state management systems — committee reports.
5-23-108. Staff support.
5-23-109. Reports.

Chapter Compiler's Comments

Effective Date: Section 13(1), Ch. 391, L. 1997, provided: "Except as provided in subsection (2), [this act] [5-23-101 through 5-23-109] is effective on passage and approval". Approved April 28, 1997.

Termination: Section 14, Ch. 391, L. 1997, provided: "[This act] terminates December 31, 2002."

Part 1

Composition — Powers and Duties — Reports

5-23-101. *(Temporary)* **Purpose.** The purpose of this chapter is to ensure legislative oversight of the laws governing state personnel, finance, and asset management. The committee created in 5-23-103 performs a general oversight function for the legislature, focusing on information technology within Montana state government and on the management of assets entrusted to the state. It is also the purpose of this chapter to enable the committee to fully pursue and examine opportunities for and advantages of installing an integrated system of asset management tools by employing an economical, effective, and ongoing transition from nonautomated or automated but not integrated legacy systems to a fully integrated, automated set of systems. The legislature also intends for the committee to conduct an ongoing evaluation of what, if any, legislative actions, including the appropriation of funds, are required to support the transition. *(Terminates December 31, 2002—sec. 14, Ch. 391, L. 1997.)*

History: En. Sec. 1, Ch. 391, L. 1997.

5-23-102. *(Temporary)* **Definition.** In this chapter, "committee" means the legislative oversight committee on state management systems created in 5-23-103. *(Terminates December 31, 2002—sec. 14, Ch. 391, L. 1997.)*

History: En. Sec. 2, Ch. 391, L. 1997.

5-23-103. *(Temporary)* **Legislative oversight committee on state management systems — appointment and composition.** (1) There is a legislative oversight committee on state management systems.

(2) The committee consists of:

(a) two members of the senate appointed by the committee on committees;

(b) two members of the house of representatives appointed by the speaker;

(c) two members of the legislative finance committee, including a member of the senate appointed by the committee on committees and a member of the house of representatives appointed by the speaker; and

(d) two members of the legislative audit committee, including a member of the senate appointed by the committee on committees and a member of the house of representatives appointed by the speaker.

(3) Each appointing authority in subsections (2)(a) through (2)(d) may not appoint more than two members of the same political party.

(4) Members must be appointed before the 90th legislative day of a regular session. *(Terminates December 31, 2002—sec. 14, Ch. 391, L. 1997.)*

History: En. Sec. 3, Ch. 391, L. 1997.

5-23-104. *(Temporary)* **Term of office — vacancies.** (1) Appointments to the committee are for 2 years. A member of the committee serves until the member's term of office as a legislator ends or the member's successor is appointed, whichever occurs first.

(2) A vacancy on the committee must be filled in the same manner as the original appointment.

(3) An appointment to the committee under subsection (2) is for the unexpired term of the original member. *(Terminates December 31, 2002—sec. 14, Ch. 391, L. 1997.)*

History: En. Sec. 4, Ch. 391, L. 1997.

5-23-105. *(Temporary)* **Officers.** (1) The committee shall elect one of its members as the presiding officer and may elect other officers it considers necessary.

(2) If the committee elects a vice presiding officer, the member elected may not be of the same political party as the presiding officer. *(Terminates December 31, 2002—sec. 14, Ch. 391, L. 1997.)*

History: En. Sec. 5, Ch. 391, L. 1997.

5-23-106. *(Temporary)* **Meetings and compensation.** (1) The committee shall meet at the request of the presiding officer or at the request of a majority of the committee members. The committee may meet during and between legislative sessions.

(2) Committee members are entitled to receive compensation and expenses as provided in 5-2-302. *(Terminates December 31, 2002—sec. 14, Ch. 391, L. 1997.)*

History: En. Sec. 6, Ch. 391, L. 1997.

5-23-107. *(Temporary)* **Powers and duties of committee — legislative oversight of state management systems — committee reports.** (1) The committee shall:

(a) exercise legislative oversight of information technology and state management systems, including without limitation the review of:

(i) proposed budgets;

(ii) proposed legislation; and

(iii) major contracts and personnel actions as those contracts or actions may apply to information technology or state management systems; and

(b) provide a forum for and actively solicit participation by representatives of local governments in Montana to facilitate communication, collaboration, and cooperation between the state and its subdivisions with respect to information technology and the management of state and nonstate assets entrusted to the state.

(2) The committee may undertake the study of:

(a) the laws governing state personnel, finance, and asset management, with the goal of ensuring clear, internally consistent, and simplified statutory language based upon clear and consistent policy goals and ensuring that the state and its agencies are able to maintain strict accountability for both state and nonstate assets entrusted to the state;

(b) opportunities for and advantages of installing an integrated system of asset management tools by employing an economical and effective transition from currently nonautomated or automated but not integrated legacy systems to a fully integrated, automated set of systems and an evaluation of what, if any, legislative actions would be required to support such a transition; and

(c) other matters that the committee determines are relevant to its purpose.

(3) The committee may form active working groups of state management and information system professionals, including personnel from the department of administration, the office of budget and program planning, the legislative fiscal division, and the legislative audit division, as well as separate user groups, to meet separately and with the committee to identify problems and opportunities and to advise the committee regarding potential solutions and planning details.

(4) The committee may:

(a) review administrative rules relevant to information technology or state management systems for the purpose of determining compliance with Title 2, chapter 17, part 5, and may take any action available as a remedy under the Montana Administrative Procedure Act; or

(b) by an affirmative vote of at least five members of the committee, contract for the preparation of an economic impact statement or require the department promulgating an administrative rule related to information technology or the management of state assets to prepare an economic impact statement, following the provisions of 2-4-405.

(5) The committee may investigate and issue reports on any matter concerning information technology or state management systems. *(Terminates December 31, 2002—sec. 14, Ch. 391, L. 1997.)*

History: En. Sec. 7, Ch. 391, L. 1997.

5-23-108. *(Temporary)* **Staff support.** (1) The legislative services division shall provide research and legal support as requested by the committee if he request is within available staff resources as determined by the executive director of the legislative services division. The legislative services division shall also provide administrative and fiscal support to the committee.

(2) The committee may request staff assistance from:

(a) the legislative branch;

(b) the department of administration or any other department of state government;

(c) the judiciary;

(d) representatives of local governments or the federal government; or

(e) private individuals or others having information or capacity to assist he committee in its activities. *(Terminates December 31, 2002—sec. 14, Ch. 391, L. 1997.)*

History: En. Sec. 8, Ch. 391, L. 1997.

5-23-109. *(Temporary)* **Reports.** (1) The department of administration hall, at the request of the committee, report to the committee on the department's progress in meeting the requirements expressed in Title 2, chapter 17, part 5.

(2) The committee shall report its findings, conclusions, and options for legislative consideration on or before December 1 immediately before each regular legislative session. *(Terminates December 31, 2002—sec. 14, Ch. 391, L. 1997.)*

History: En. Sec. 9, Ch. 391, L. 1997.

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